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Presidential Documents

Title 3—

The President

Proclamation 7823 of October 1, 2004

National Breast Cancer Awareness Month, 2004

By the President of the United States of America

A Proclamation

During National Breast Cancer Awareness Month, we raise awareness of this deadly disease, encourage early detection, and support research to find a cure.

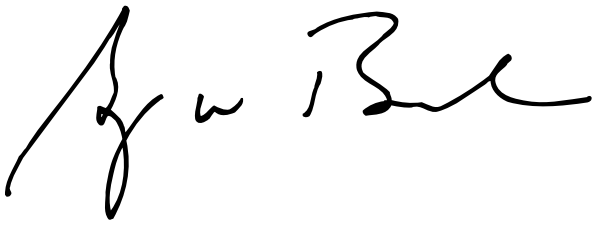
Prevention and early detection are key to winning the fight against breast cancer. Although the exact cause of the disease is unknown, factors that can affect the risk of developing cancer include age, general health, and family history. This year, estimates are that over 200,000 women will be diagnosed with breast cancer. Regular screening for breast cancer continues to be the most effective way to detect this disease early and to save lives, and mammograms are the best screening tool we currently have. Women should talk to their health care providers about their breast cancer risk.

To improve the quality of life and find a cure for those affected by breast cancer, we are learning more about its causes. The National Institutes of Health has invested an estimated $700 million this year alone on breast cancer research and will spend more next year. The Centers for Disease Control and Prevention has devoted over $200 million this year and more next year for an early detection program that promotes mammograms and helps low-income women afford screenings for breast and cervical cancer. The Department of Defense also invested approximately $150 million for its Breast Cancer Research program in 2004. This funding will help lead to better treatments for cancer patients and new hope for countless Americans and their families.

We salute breast cancer survivors for their courage and perseverance. Their courageous battle against cancer is an inspiration to countless Americans, and their willingness to share their stories and experiences helps spread awareness and offers hope and comfort to cancer patients across the country. Together with health care professionals, researchers, and family members, we can improve the lives of those suffering from this disease and win the fight against breast cancer.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 2004 as National Breast Cancer Awareness Month. I call upon Government officials, businesses, communities, health care professionals, educators, volunteers, and all the people of the United States to continue our Nation's strong commitment to controlling and curing breast cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206–AK29

Cost-of-Living Allowances (Nonforeign Areas); Methodology Changes

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is making technical changes in the methodology used to determine nonforeign area cost-of-living allowances (COLAs). The changes correct minor drafting errors; provide consistent treatment of sale prices; allow the use of non-housing price data collected on St. John, U.S. Virgin Islands; correct and clarify the definition of survey areas; and allow a one-time prospective index adjustment for the Caribbean and Alaska areas concurrent with the effective date of any COLA rate changes resulting from the 2004 Pacific COLA surveys. OPM is making these changes in large part as the result of experience gained in recent COLA surveys and upon the recommendation of several groups established to assist us in administering the COLA program.

DATES: Effective November 5, 2004.

FOR FURTHER INFORMATION CONTACT: Donald L. Paquin, (202) 606–2838; fax: (202) 606–4264; or e-mail: *COLA@opm.gov.*

SUPPLEMENTARY INFORMATION: Section 5941 of title 5, United States Code, authorizes the payment of cost-of-living allowances (COLAs) to employees of the Federal Government stationed in certain nonforeign areas outside the contiguous 48 States whose rates of basic pay are fixed by statute. Executive Order 10000, as amended, delegates to the Office of Personnel Management (OPM) the authority to administer nonforeign area COLAs and prescribes certain operational features of the program.

The Government pays nonforeign area COLAs to General Schedule, U.S. Postal Service, and certain other Federal employees in Alaska, Hawaii, Guam and the Commonwealth of the Northern Mariana Islands (CNMI), Puerto Rico, and the U.S. Virgin Islands. OPM conducts COLA surveys in each allowance area to determine whether, and to what extent, local living costs are higher than those in the Washington, DC, area. OPM sets the COLA rate for each area based on the results of these surveys.

On February 9, 2004, OPM published proposed regulatory changes in the **Federal Register** (69 FR 6020) which would (1) correct minor drafting errors; (2) provide consistent treatment of sale prices; (3) allow the use of non-housing price data collected on St. John, U.S. Virgin Islands; (4) correct and clarify the definition of the survey areas; and (5) allow a one-time prospective index adjustment for the Caribbean and Alaska areas concurrent with the effective date of any COLA rate changes resulting from the 2004 Pacific COLA surveys. We received six comments on these proposed changes.

One comment was from members of the Hilo COLA Advisory Committee (CAC). Prior to each survey, OPM establishes CACs in each survey area to advise OPM on the COLA surveys and other issues relating to the administration of the COLA program. The Hilo CAC noted that the definition of the Hilo, Hawaii, survey area (which was stated as the ''City of Hilo'') was incorrect because Hilo is not a municipality. Therefore, OPM is changing the survey area name to the ''Hilo area.''

Another comment was from members of the Kailua Kona CAC who recommend that the Kailua Kona survey area be expanded to include Waimea and Waikoloa areas. OPM agreed to survey these areas on a test basis in the 2004 survey to determine the feasibility of expanding the survey area. OPM found that it was feasible to do so and agrees with the recommendation to expand the survey area. To reflect this change, OPM is changing the name of the survey area to the ''Kailua Kona/Waimea area,'' which includes Waikoloa.

A third comment was from a member of the Survey Implementation Committee, established pursuant to the settlement in *Caraballo, et al.* v. *United States,* No. 1997–0027 (D.V.I.), August 17, 2000. The commenter recommended that OPM no longer collect housing data in eastern Puerto Rico because of the closing of Roosevelt Roads Naval Station. The commenter suggested that OPM consider surveying other areas in Puerto Rico. We agree that OPM may need to revise the areas in which it collects housing data in Puerto Rico. Therefore, we have removed the reference to eastern Puerto Rico from the Survey Area table in 5 CFR 591.215, removed a similar reference from § 591.219(b), and allowed for the collection of housing data in other areas in Puerto Rico with significant Federal employment.

Another member of the Survey Implementation Committee recommended that we clarify the exception in § 591.219(b), which concerns the use of housing data collected in eastern Puerto Rico and in St. John. The commenter recommended that the exception state that OPM combines housing data collected for St. John with the data collected for St. Thomas to produce indexes for the St. Thomas/St. John survey area. We agree that the exception in § 591.219(b) may have been confusing and have concluded that it is no longer needed. OPM analyzes the data it collects in St. Thomas/St. John in the same manner as the data it collects in Fairbanks/North Pole, Kailua Kona/Waimea, and other survey areas with multiple locations. Therefore, there is no exception applicable to St. John.

A fifth commenter requested that OPM revise the proposed change in the definition of ''Washington, DC, area or DC area'' in § 591.201 to state exactly the situations the change will affect or cite the parts or subparts to which the revised definition applies. OPM proposed changing the definition of several survey areas to address the need to survey certain items on an exception basis in locations beyond the local jurisdiction. With one exception, the proposed definitional changes were limited to § 591.215(a), which lists the survey areas. The exception is the Washington, DC, area, which is defined in § 591.201 and listed again with the other survey areas in § 591.215(a).

Because the purpose of § 591.201 is to define terms that OPM uses throughout subpart B, we believe it would be impractical to cite within the definition of the ''Washington, DC, area or DC area'' each section where the term is used. OPM also believes it would be impractical to state exactly which situations (*i.e.*, items and locations) the expanded definition addresses. Survey items change from one survey to the next, in large part based on CAC recommendations. From experience OPM has learned that it sometimes must survey items, such as golf, snow skiing, and air travel, in areas beyond the local jurisdictions listed in the table in § 591.215(a). Therefore, OPM proposed expanding several of those areas on an exception basis. The proposed change lists golf, snow skiing, and air travel *as examples* because setting in regulation exactly which items OPM can survey outside a jurisdiction would be overly restrictive and would weaken OPM's ability to accommodate CAC suggestions. Therefore, we are not adopting the commenter's suggestion, but we are making additional changes in the title and column headings in the table in § 591.215(a) to further clarify survey area definitions.

Before each survey, OPM consults with the local CACs concerning item selection, including any items we might survey outside local jurisdictions. We also include a list of the items surveyed in the survey reports we publish for comment in the **Federal Register**. The item descriptions identify which items OPM surveyed beyond local jurisdictions.

The sixth commenter stated that Federal employees should not receive COLA increases. The commenter noted the high cost of living in the Washington, DC, area and stated that she did not believe Federal employees in other areas needed to receive more than employees in the DC area. OPM notes that section 5941 of title 5, United States Code, and Executive Order 10000 require the Federal Government to pay COLAs to Federal employees in areas outside the contiguous 48 States where living costs are substantially higher than in Washington, DC. Under this authority, OPM sets COLA rates after surveying and comparing living costs in the COLA areas and the DC area.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, the Office of Personnel Management amends subpart B of 5 CFR part 591 as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

■ 1. The authority citation for subpart B of 5 CFR part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; and E.O. 12510, 3 CFR, 1985 Comp., p. 338.

■ 2. In § 591.201, revise the definition of ''Washington, DC, area or DC area'' to read as follows:

§ 591.201 Definitions.

* * * * *

Washington, DC, area or DC area means the District of Columbia; Montgomery County, MD; Prince Georges County, MD; Arlington County, VA; Fairfax County, VA; Prince William County, VA; and the independent cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park, Virginia; and in the context of certain survey items, includes additional geographic locations beyond these jurisdictions.

■ 3. In § 591.213, revise paragraph (b)(1) to read as follows:

§ 591.213 What prices does OPM collect?

* * * * *

(b) * * *

(1) OPM does not collect coupon prices, clearance prices, going-out-of-business prices, or area-wide distress sale prices.

* * * * *

■ 4. In § 591.215, revise paragraph (a) to read as follows:

§ 591.215 Where does OPM collect prices in the COLA and DC areas?

(a) *Survey areas.* Each COLA area has one survey area, except Hawaii County, HI, and the U.S. Virgin Islands COLA areas. Hawaii County has two survey areas: the Hilo area and the Kailua Kona/Waimea area. The U.S. Virgin Islands also has two survey areas: the Island of St. Croix and the Islands of St. Thomas and St. John. The Washington, DC, area has three survey areas: the District of Columbia, the Maryland suburbs of the District of Columbia, and the Virginia suburbs of the District of Columbia. OPM collects non-housing data throughout the survey area, and for selected items such as golf, snow skiing, and air travel, OPM collects non-housing data in additional geographic locations. OPM may collect housing data throughout the survey area or in specific housing data collection areas. The following table shows the survey areas:

SURVEY AREAS

COLA and reference areas	Survey areas and geographic coverage
Anchorage	City of Anchorage.[1]
Fairbanks	Fairbanks/North Pole area.[1]
Juneau	Juneau/Mendenhall/Douglas area.[1]
Rest of Alaska	See paragraph (c) of this section.
Honolulu	City and County of Honolulu.
Hawaii County	Hilo area.[1]
	Kailua Kona/Waimea area.
Kauai	Kauai Island.
Maui	Maui Island.
Guam & CNMI	Guam.
Puerto Rico	San Juan/Caguas area.[2]
U.S. Virgin Islands	St. Croix.
	St. Thomas/St. John area.[3]
Washington, DC–DC	District of Columbia.[1]

SURVEY AREAS—Continued

COLA and reference areas	Survey areas and geographic coverage
Washington, DC–MD	Montgomery County and Prince Georges County.[1]
Washington, DC–VA	Arlington County, Fairfax County, Prince William County, City of Alexandria, City of Fairfax, City of Falls Church, City of Manassas, and City of Manassas Park.[1]

[1] For selected items, such as golf, snow skiing, and air travel, these survey areas may include additional geographic locations beyond these jurisdictions.
[2] OPM may collect housing data in other areas in Puerto Rico that have a significant concentration of Federal employees stationed in those areas.
[3] OPM collects housing data in St. John. OPM also may collect non-housing data from selected outlets in St. John.

* * * * *

■ 5. In § 591.216, revise paragraph (b) to read as follows:

§ 591.216 How does OPM combine survey data for the DC area and for COLA areas with multiple survey areas?

* * * * *

(b) *COLA areas with multiple survey areas.* OPM computes weighted average indexes at the item, PEG, MEG, and/or overall level by using the corresponding indexes and Federal employment weights from each survey area within the COLA area.

■ 6. In § 591.219, revise paragraph (b) to read as follows:

§ 591.219 How does OPM compute shelter price indexes?

* * * * *

(b) OPM then uses these characteristics and rental prices and/or estimates in hedonic regressions (a type of multiple regression) to compute for each COLA survey area the price index for rental and/or rental equivalent units of comparable quality and size between the COLA survey area and the Washington, DC, area.

■ 7. In § 591.222, revise paragraph (c) to read as follows:

§ 591.222 How does OPM use the expenditure weights to combine price indexes?

* * * * *

(c) *Step 3.* OPM repeats the process described in Step 2 at each level of aggregation within the PEG to produce a price index for the PEG, at the PEG level to produce an index for the MEG, and at the MEG level to produce the overall price index for the COLA area.

■ 8. In § 591.224, revise paragraph (b) and add paragraph (c) to read as follows:

§ 591.224 How does OPM adjust price indexes between surveys?

* * * * *

(b) Paragraph (a) of this section applies beginning with the effective date of the results of the 2005 survey conducted in Puerto Rico and the U.S. Virgin Islands.

(c) Based on additional housing data that may be collected before the 2005 survey conducted in Puerto Rico and the U.S. Virgin Islands, OPM will adjust as warranted the price indexes and COLA rates for Puerto Rico, the U.S. Virgin Islands, and the COLA areas in the State of Alaska. OPM will implement any such adjustments on a one-time basis on the effective date of the results of the 2004 surveys conducted in Hawaii and Guam/CNMI, and subject to § 591.228. OPM will publish such adjustments as provided in § 591.229.

[FR Doc. 04–22531 Filed 10–5–04; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Dairy Tariff-Rate Import Quota Licensing; Final Rule

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule; technical corrections.

SUMMARY: This document amends the Dairy Tariff-Rate Import Quota Licensing regulation to provide for applications to be submitted using the internet, while continuing to permit applicants to use the existing certified mail provision for applications. The requirement that applications be notarized is eliminated. Additionally, an incorrect section reference is corrected.

DATES: Effective on September 1, 2004.

FOR FURTHER INFORMATION CONTACT: Bettyann Gonzales, Dairy Import Specialist, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue, SW, STOP 1021, by e-mail at: *gonzalesb@fas.usda.gov,* telephone 202–720–1344, or fax at 202–720–6556.

SUPPLEMENTARY INFORMATION: The Dairy Tariff-Rate Import Quota Licensing program regulation which is codified at 7 CFR part 6, implements the licensing system for certain dairy products which are eligible for in-quota tariff rates proclaimed in the Harmonized Tariff Schedule of the United States.

Currently, § 6.36(b) requires all submissions to be made by registered or certified mail, return receipt requested, with a postmarked receipt. The Dairy Import Licensing Authority will soon be implementing a software program to permit applications for dairy import licenses to be submitted electronically over the internet. Therefore, the regulation is amended in various sections to permit applications to be submitted over the Internet, or by mail.

A final rule published on January 10, 2000, (65 FR 1297–1298) redesignated § 6.35 as § 6.36 and inserted a new § 6.35, but did not change references to the original § 6.35 throughout the regulation. This rules corrects the references.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy Products, Imports, Reporting and record keeping requirements.

■ Accordingly, 7 CFR part 6 is amended as follows:

PART 6—IMPORT QUOTAS AND FEES

Subpart—Dairy Tariff-Rate Import Quota Licensing

■ 1. The authority citation for Part 6, Subpart—Dairy Tariff-Rate Import Quota Licensing continues to read as follows:

Authority: Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97–258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103–465, 108 Stat. 4819 (19 U.S.C. 3513 and 3601).

■ 2. Amend § 6.24 by revising paragraphs (a) and (b)(1), and the introductory text of paragraph (c) to read as follows:

§ 6.24 Application for a license.

(a) Application for license shall be made on either paper or electronic

forms, provided or designated by the Licensing Authority, and shall be submitted in accordance with § 6.36(b). All parts of the application shall be completed. The application, if mailed, shall be postmarked no earlier than September 1 and no later than midnight October 15 of the year preceding that for which license application is made. The application, if submitted electronically, shall be transmitted no earlier than September 1 and no later than midnight October 15 of the year preceding that for which license application is made. The Licensing Authority will not accept incomplete applications or unpostmarked mailed applications.

(b)(1) Where the applicant seeks to establish eligibility on the basis of imports, applications shall include identification of entries (if submitted electronically) or Customs Form 7501 (if submitted by mail), sufficient to establish the applicant as the importer of record of entries required under § 6.23, during the 12-month period ending August 31 prior to the quota year for which license is being sought.

* * * * *

(c) However, if the applicant is applying on the basis of more than eight shipments, the application, if mailed, shall include:

* * * * *

■ 3. Amend § 6.26 by revising paragraph (a) and the introductory text of paragraph (c) to read as follows:

§ 6.26 Surrender and reallocation.

(a) If a licensee determines that it will not enter the entire amount of an article permitted under its license, such licensee shall surrender its license right to enter the amount that it does not intend to enter. Surrender shall be made to the Licensing Authority in writing by mail or electronic submission, postmarked or electronically submitted, in accordance with § 6.36(b), no later than October 1. Any surrender shall be final and shall be only for that quota year, except as provided in § 6.25(b). The amount of the license not surrendered shall be subject to the license use requirements of § 6.23(c)(1).

* * * * *

(c) Any person who has been issued a license for a quota year may apply to receive additional license, or addition to an existing license for a portion of the amount being reallocated. The application shall be submitted to the Licensing Authority by mail or electronic submission, in accordance with § 6.36(b), no earlier than September 1 and not later than September 15, and shall specify:

* * * * *

■ 4. Amend § 6.28 by revising paragraph (b) to read as follows:

§ 6.28 Transfer of license.

* * * * *

(b) The parties seeking transfer of license shall give written notice to the Licensing Authority of the intended sale or conveyance described in paragraph (a) of this section by mail as required in § 6.36(b). The notice must be received by the Licensing Authority at least 20 working days prior to the intended consummation of the sale or conveyance. Such written notice shall include copies of the documents of sale or conveyance. The Licensing Authority will review the documents for compliance with the requirements of paragraph (a) of this section and advise the parties in writing of its findings by the end of the 20-day period. The parties shall have the burden of demonstrating to the satisfaction of the Licensing Authority that the contemplated sale or conveyance complies with the requirements of paragraph (a) of this section. Within 15 days of the consummation of the sale or conveyance, the parties shall mail copies of the final documents to the Licensing Authority, in accordance with § 6.36(b). The Licensing Authority will not transfer the licenses unless the documents are submitted in accordance with this paragraph.

* * * * *

■ 5. Amend § 6.33 by revising paragraphs (b), (c), and (d) to read as follows:

§ 6.33 License fee.

* * * * *

(b) The license fee for each license issued is due and payable in full by mail or electronic submission, postmarked or electronically submitted in accordance with § 6.36(b), no later than May 1 of the year for which the license is issued. The fee for any license issued after May 1 of any quota year is due and payable in full by mail or electronic submission, postmarked or electronically submitted in accordance with § 6.36(b), no later than 30 days from the date of issuance of the license. Fee payments, if made by mail, shall be made by certified check or money order payable to the Treasurer of the United States. Fee payments, if made electronically, shall be made utilizing the electronic software designated for the purpose by the Licensing Authority.

(c) If the license fee is not paid by the final payment date, a hold will be placed on the use of the license and no articles will be permitted entry under that license. The Licensing Authority shall send a warning letter by certified mail, return receipt requested, advising the licensee that if payment is not mailed in accordance with § 6.36(b) or received within 21 days from the date of the letter, that the license will be revoked. Where the license at issue is a historical license, this will result, pursuant to § 6.23(b), in the person's loss of historical eligibility for such license.

(d) Licensees may elect not to accept certain licenses issued to them; however, the Licensing Authority must be so notified by mail or electronic e-mail, postmarked or electronically submitted in accordance with § 6.36(b) no later than May 1 of the year for which the license is issued.

■ 6. Amend § 6.36 by revising paragraph (b) to read as follows:

§ 6.36 Miscellaneous.

* * * * *

(b) All submissions required under this subpart shall be made either by registered or certified mail, return receipt requested, with a postmarked receipt, with proper postage affixed and properly addressed to the Dairy Import Licensing Group, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington DC 20250–1021, or by electronic submission utilizing the electronic software designated for this purpose by the Licensing Authority.

Signed at Washington, DC, on September 24, 2004.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–22444 Filed 10–5–04; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1776

RIN 0572–AB93

Household Water Well System Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the United States Department of Agriculture's Rural Development Utilities Programs, is issuing regulations in order to establish the Household Water System Program as authorized by section 306E of the Consolidated Farm and Rural Development Act (CONACT). This direct final rule will establish a lending program for the construction, refurbishing, and servicing of

individually-owned household water well systems in rural areas that are or will be owned by the eligible individuals. In addition, the rule outlines the process by which applicants can apply for the program and how RUS will administer the grant program.

DATES: This rule will become effective November 22, 2004, unless RUS receives written adverse comments or a written notice of intent to submit adverse comments on or before November 5, 2004. If RUS receives such comments or notice, RUS will publish a timely notice in the **Federal Register** withdrawing the rule. Comments received will be considered under the proposed rule published in this edition of the **Federal Register** in the proposed rule section. A second public comment period will not be held. Comments must be received by RUS or carry a postmark or equivalent no later than November 5, 2004.

Comments regarding the information collection requirements under the Paperwork Reduction Act must be received on or before December 6, 2004, to be assured of consideration.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- Agency Web Site: *http://www.usda.gov/rus/index2/Comments.htm*. Follow the instructions for submitting comments.
- E-mail: *RUSComments@usda.gov*. Include in the subject line of the message ''7 CFR 1776.''
- Mail: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250–1522.
- Hand Delivery/Courier: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., Room 5168–S, Washington, DC 20250–1522.

Instructions: All submissions received must include RUS and the subject heading ''7 CFR 1776''. All comments received must identify the name of the individual (and the name of the entity, if applicable) who is submitting the comment. All comments received will be posted without change to *http://www.usda.gov/rus/index2/Comments.htm*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Cheryl Francis, Loan Specialist, Water Programs Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2239–S, Stop 1570, Washington, DC 20250–1570. Telephone (202) 720–1937. E-Mail: *Cheryl.Francis@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This 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 (OMB).

Executive Order 12372

This program is not subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as implemented under USDA's regulations at 7 CFR part 3015.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to the rule; and, in accordance with Section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. section 6912(e)) administrative appeal procedures, if any are required, must be exhausted prior to initiating any action against the Department or its agencies.

Regulatory Flexibility Act Certification

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Rural Utilities Service is not required by 5 U.S.C. 551 *et seq.* or any other provision of the law to publish a notice of final rule making with respect to the subject matter of this rule.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB). These requirements have been approved by emergency clearance under OMB Control Number 0572–0139.

Comments on this notice must be received by December 6, 2004.

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

Comments may be sent to Michele Brooks, Management Analyst, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 5168 South Building, Washington, DC 20250–1522. FAX: (202) 720–4120. E-mail: *michele.brooks@usda.gov*.

Title: 7 CFR 1776, Household Water System Program.

Type of Request: Extension of a currently approved collection.

Abstract: The Household Water System program will provide grant funds to establish a lending program for the construction, refurbishing, and servicing of individually-owned household water well systems in rural areas that are or will be owned by the eligible individuals. The collection of information covered by this Notice consists of forms, certifications, and written materials in support of an application for a grant. Failure to collect proper information could result in improper determinations of eligibility, improper use of funds, or hindrances in making grant(s) authorized by the Household Water System Program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6 hours per response.

Respondents: Not for profit institutions and Business or other for profit.

Estimated Number of Respondents: 5.

Estimated Number of Responses per Respondent: 13.

Estimated Total Annual Burden on Respondents: 401 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078.

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

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.862. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC, 20402–9325, telephone number (202) 512–1800.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

Background

On May 13, 2002, the Farm Security and Rural Investment Act of 2002 (Farm Bill) was signed into law as Public Law 107–171. The CONACT was amended by section 6012 of the Farm Bill, by adding a grant program to establish a lending program. For this program, the Secretary may make grants to private nonprofit organizations for the purpose of providing loans to eligible individuals for the construction, refurbishing, and servicing of individual household water well systems in rural areas that are or will be owned by the eligible individuals.

The CONACT defines an ''eligible individual'' to mean an individual who is a member of a household the members of which have a combined income (for the most recent 12-month period for which the information is available) that is not more than 100 percent of the median nonmetropolitan household income for the State or territory in which the individual resides, according to the most recent decennial census of the United States.

This program is authorized to be appropriated $10,000,000 for fiscal years (FY) 2003 through 2007.

There was no funding appropriated in FY 2003. However, the Consolidated Appropriations Act, 2004, Public Law 108–199 (Jan. 23, 2004; 118 Stat.3) includes $1,000,000 for the grant program in FY 2004.

Due to the modest size of this program and the maximum dollar amount of loans to be made hereunder, RUS has determined that loans maybe serviced, if approved by USDA, through the USDA Centralized Servicing Center to enhance standardized servicing and minimize related servicing fees. To reduce duplicative promulgation of specific rules regarding grants and loans hereunder, RUS has referenced existing USDA rules to the extent practicable, including references to specific regulations and standard forms.

A notice of inquiry was published in the **Federal Register** on February 10, 2004 (69 FR 6251) requesting comments on the Household Water System grant program. RUS received a total of 15 comments. All comments received were taken into consideration in developing the regulation. The following is a brief summary of the comments received.

Grantees' experience with household water systems. All the commenters felt that the grantee should have extensive experience with household water systems. Due to the complexity of household water systems, RUS feels that an organization must have extensive experience working with household water systems in order to assess solutions, determine cost factors, and how to best fulfill the needs of the rural residents utilizing these systems. In accordance with the requirements in the authorizing legislation of the CONACT, RUS will give priority to applicants with such experience.

Matching funds. Half of the commenters felt RUS should not require a matching fund component while the other half were in favor of a matching fund requirement. Due to the small amount of funding appropriated to this program, RUS feels it is necessary to require grant recipients to contribute funds from sources other than the proceeds of a HWWS grant to pay part of the cost of a loan recipient's project. As a result of such contributions, the widest number of rural residents practicable may benefit from this program.

Percentage of financing. Many commenters felt the program should offer 100 percent financing. They also felt the program should be for low-income communities and that RUS should not require the eligible individual to contribute to the cost. RUS will allow 100 percent financing on these projects; however, the project costs can not exceed the statutory limit. In situations where the costs exceed the statutory limit of $8,000 per household water well system, the eligible individual will be required to cover the additional costs.

Administrative fees. Many commenters felt RUS should allow administrative fees, and the limit on those fees ranged from 8 percent to 20 percent. RUS will allow administrative fees to be an eligible grant purpose; however, the administrative costs cannot exceed 10 percent of the total grant funds loaned annually. These costs also must be clearly identified in the workplan.

Use of Centralized Servicing Center. The majority of commenters were in favor of using the Centralized Servicing Center (CSC). Some felt if the grantee has a similar program in place, the servicing should remain with the grantee. Due to the modest size of this program and the maximum dollar amount of loans to be made hereunder, RUS has determined that loans may be serviced, if approved by USDA, through the USDA Centralized Servicing Center to enhance standardized servicing and minimize related servicing fees.

Credit elsewhere. Some commenters felt a denial letter would be sufficient evidence to show an inability to acquire credit elsewhere. Others felt RUS should use the credit report and income verification to satisfy the credit elsewhere requirement. RUS will require the grantee to obtain sufficient evidence that the eligible individual is unable to obtain financial assistance at reasonable terms and conditions from other non-RD sources, and lacks the personal resources to meet their needs. In addition, the eligible individual must demonstrate adequate repayment ability as supported by a budget, and they must have a credit history that indicates reasonable ability and willingness to meet debt obligations.

Eligible and ineligible purposes. A couple of commenters felt newly built homes and wells for uses other than potable water should be eligible for the program. Most felt the repair or replacement of failing well systems should be eligible. RUS will follow the authorizing legislation and require that grant proceeds be used solely for the purpose of providing loans to eligible

individuals for the construction, refurbishing, and servicing of individual household water well systems in rural areas that are or will be owned by the eligible individuals.

List of Subjects in 7 CFR Part 1776

Agriculture, Community development, Community facilities, Credit, Grant programs-housing and community development, Nonprofit organizations, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water pollution control, Water resources, Water supply, Watersheds.

■ For reasons set forth in the preamble, RUS amends 7 CFR chapter XVII of Title 7 of the Code of Federal Regulations by adding a new part 1776 to read as follows:

PART 1776—HOUSEHOLD WATER WELL SYSTEM GRANT PROGRAM

Subpart A—General

Sec.
1776.1 Purpose.
1776.2 Uniform Federal Assistance Provisions.
1776.3 Definitions.
1776.4 [Reserved]

Subpart B—HWWS Grants

1776.5 Eligibility to receive a grant.
1776.6 Notice of availability of funds.
1776.7 Grant application process.
1776.8 Methods for submitting applications.
1776.9 Scoring applications.
1776.10 Grant agreement.
1776.11 Revolving loan fund.
1776.12 Use of grant proceeds.
1776.13 Administrative expenses.

Subpart C—HWWS Loans

1776.14 Eligibility to receive a HWWS loan.
1776.15 Terms of loans.
1776.16 Loan servicing.
1776.17 Revolving loan fund maintenance.
1776.18 OMB control number.

Authority: 7 U.S.C. 1926e.

Subpart A—General

§ 1776.1 Purpose.

This part sets forth the policies and procedures for making grants to private, nonprofit organizations to finance the construction, refurbishing and servicing of individually-owned household water well systems in rural areas for individuals with low or moderate income.

§ 1776.2 Uniform Federal Assistance Provisions.

(a) This program is subject to the general provisions that apply to all grants made by USDA and that are set forth in 7 CFR Part 3015—Uniform Federal Assistance Regulations.

(b) This program is subject to the uniform administrative requirements that apply to all grants made by USDA to non-profit organizations and that are set forth in 7 CFR Part 3019—Uniform Administrative Requirements for Grants And Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.

(c) This program is subject to OMB Circular No. A–122 (Revised): Cost Principles for Non-Profit Organizations.

§ 1776.3 Definitions.

Administrative expenses means expenses incurred by a grant recipient that are of the type more particularly described in § 1776.13.

Applicant means a private, nonprofit organization that applies for a HWWS grant under this part.

Centralized Servicing Center (CSC) means the centralized loan servicing center within the United States Department of Agriculture, Rural Development. CSC provides nationwide services for borrowers that have received financing from Rural Development programs.

Construction means building or assembling a water well system or portion thereof, that is not a water well system or portion thereof being constructed in connection with a new building.

Eligible individual means an individual who is a member of a household the members of which have a combined income (for the most recent 12-month period for which the information is available) that is not more than 100 percent of the median nonmetropolitan household income for the State of territory in which the individual resides, according to the most recent decennial census of the United States.

Grant agreement means the contract between RUS and the grant recipient which sets forth the terms and conditions governing a particular grant awarded under this part.

Grant recipient means an applicant that has been awarded a HWWS grant under this part.

HWWS means household water well system.

HWWS grant means a grant awarded by RUS to a grant recipient under this part.

HWWS loan means a loan made by a grant recipient to a loan recipient using the direct or indirect proceeds of a HWWS grant awarded under this part.

Loan recipient means an eligible individual who has received a HWWS loan.

Refurbishing means to renovate or to restore a water well system or portion thereof to near new condition.

Revolved funds means the cash portion of the revolving loan fund that is not composed of HWWS grant funds, including repayments of revolving HWWS loans, fees and interest collected on HWWS loans.

Revolving loan fund means the loan fund established by the grant recipient to carry out the purposes of this part, such fund comprising the proceeds of a HWWS grant and other related assets.

Rural area means any area other than a city or town that has a population of greater than 50,000 inhabitants; and the urbanized area contiguous and adjacent to such city or town.

RUS means the Rural Utilities Service, a Federal agency delivering the United States Department of Agriculture's Rural Development Utilities Program.

Servicing means making repairs or performing maintenance on a water well system or portion thereof.

USDA means the United States Department of Agriculture.

§ 1776.4 [Reserved]

Subpart B—HWWS Grants

§ 1776.5 Eligibility to receive a grant.

(a) The applicant must be a private organization.

(b) The applicant must be organized as a non-profit organization.

(c) The applicant must have legal capacity and lawful authority to perform the obligations of a grant recipient under this part.

Example 1 to paragraph (c): If the organization is incorporated as a non-profit corporation, it must have corporate authority under state law and its corporate charter to engage in the practice of making loans to individuals.

Example 2 to paragraph (c): If the organization is an unincorporated association, state law may prevent the organization from entering into binding contracts, such as a grant agreement.

(d) The applicant must have sufficient expertise and experience in lending and in promoting the safe and productive use of individually-owned household water well systems and ground water to assure the likelihood that the objectives of this part can be achieved.

§ 1776.6 Notice of availability of funds.

(a) In Fiscal Year 2004, applications will be accepted for this program from October 6, 2004, until December 6, 2004, at which time the initial application period shall close. An applicant may withdraw, substitute, amend or supplement its application at any time prior to the closing of the initial application period. Once the

initial application period has closed, all applications shall be considered final.

(b) For subsequent fiscal years, if any funds for this program are available, the Secretary will publish a notice to that effect. The notice will establish the period during which applications for such funds may be submitted for consideration.

§ 1776.7 Grant application process.

(a) The applicant must complete and submit the following standard forms to RUS to apply for a HWWS grant under this part:

(1) Application for Federal Assistance: *Standard Form 424*,

(2) Budget Information—Non-Construction Programs: *Standard Form 424A*, and

(3) Assurances—Non-Construction Programs: *Standard Form 424B*.

(b) The applicant must submit a written work plan that demonstrates the feasibility of the applicant's lending program to meet the objectives of this part.

(c) The applicant should submit a narrative establishing the basis for any claims that it has substantial expertise in promoting the safe and productive use of individually-owned household water well systems. The Secretary will give priority to an applicant that demonstrates it has substantial experience of this type.

(d) The applicant must submit:

(1) A pro forma balance sheet at start-up and projected balance sheets for at least 3 additional years,

(2) Financial statements for the last 3 years, or from inception of the operations of the grant recipient if less than 3 years, and

(3) Projected cash flow and earnings statements for at least 3 years, supported by a list of assumptions showing the basis for the projections. The projected earnings statement and balance sheets must include one set of projections specific to the revolving loan fund, and a separate set of projections that detail the proposed applicant organization's total operations.

(e) The applicant may submit such additional information as it elects to support and describe its plan for achieving the objectives of this part.

§ 1776.8 Methods for submitting applications.

(a) Applications for HWWS grants may be submitted by U.S. Mail. Applications submitted by mail must be addressed as follows: Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1548, Washington, DC 20250–1548. The outside of the application should be marked: ''Attention: Assistant Administrator, Water and Environmental Programs.'' Applications submitted by mail must be postmarked not later than the filing deadline to be considered during the period for which the application was submitted.

(b) In lieu of submitting an application by U.S. Mail, an applicant may file its application electronically by using the Federal Government's eGrants Web site (Grants.gov) at *http://www.grants.gov.* Applicants should refer to instructions found on the Grants.gov Web site for procedures for registering and using this facility. Applicants who have not previously registered on Grants.gov should allow a sufficient number of business days to complete the process necessary to be qualified to apply for Federal Government grants using electronic submissions. Electronic submissions must be filed not later than the filing deadline to be considered during the period for which the application was submitted.

(c) The methods of submitting applications may be changed from time to reflect changes in addresses and electronic submission procedures. Applicants should refer to the most recent notice of funding availability for notice of any such changes. In the event of any discrepancy, the notice must be followed.

§ 1776.9 Scoring applications.

(a) Applications that are incomplete or ineligible will be returned to the applicant, accompanied by a statement explaining why the application is being returned.

(b) Promptly after an application period closes, all applications that are complete and eligible will be ranked competitively based on the following scoring criteria:

(1) Degree of expertise and experience in promoting the safe and productive use of individually-owned household water well systems and ground water. Up to 30 points

(2) Degree of expertise and successful experience in making and servicing loans to individuals. Up to 20 points

(3) Percentage of applicant contributions. Points allowed under this paragraph will be based on written evidence of the availability of funds from sources other than the proceeds of a HWWS grant to pay part of the cost of a loan recipient's project. In-kind contributions will not be considered. Funds from other sources as a percentage of the HWWS grant and points corresponding to such percentages are as follows:

(i) Less than 25 percent—ineligible;

(ii) Greater than 25 percent but not more than 30 percent of the total project costs—5 points;

(iii) Greater than 30 percent but not more than 50 percent of the total project costs—10 points; and

(iv) Over 50 percent of the total project costs—20 points.

(4) Extent to which the work plan demonstrates a well thought out, comprehensive approach to accomplishing the objectives of this part, clearly defines who will be served by the project, and appears likely to be sustainable. Up to 20 points

(5) Extent to which the goals and objectives are clearly defined, tied to the work plan, and are measurable. Up to 10 points

(6) Lowest ratio of projected administrative expenses to loans advanced. 10 points

(7) Administrator's discretion, considering such factors as creative outreach ideas for marketing HWWS loans to rural residents, the amount of funds requested in relation to the amount of needs demonstrate in the work plan, previous experiences demonstrating excellent utilization of a revolving loan fund grant, and optimizing the use of agency resources. Up to 10 points

(c) All qualifying applications under this part will be scored based on the criteria contained in this section. Awards will be made based on the highest ranking applications and the amount of financial assistance available for HWWS grants. Each applicant will be notified in writing of the score its application receives.

§ 1776.10 Grant agreement.

RUS and the grant recipient will enter into a contract setting forth the terms and conditions governing a particular HWWS grant award. RUS will furnish the form of grant agreement. No funds awarded under this part shall be disbursed to the grant recipient before the grant agreement is binding and RUS has received a fully executed counterpart of the grant agreement.

§ 1776.11 Revolving loan fund.

The grant recipient shall establish and maintain a revolving loan fund for the purposes set forth in § 1776.12. All loans made to loan recipients shall be drawn from the revolving loan fund. Such loans shall be serviced, and the revolving loan fund shall be maintained, as set forth in § 1776.17.

§ 1776.12 Use of grant proceeds.

(a) Except as otherwise provided in paragraph (b) of this section, HWWS grant proceeds shall be used solely for

the purpose of providing loans to eligible individuals for the construction, refurbishing, and servicing of individual household water well systems in rural areas that are or will be owned by the eligible individuals.

(b) A grant recipient may use HWWS grant funds to pay administrative expenses associated with providing the assistance described in paragraph (a) of this section.

(c) A grant recipient may not use grant funds in any manner inconsistent with the terms of the grant agreement.

§ 1776.13 Administrative expenses.

(a) Subject to the limitations provided in the paragraphs (b), (c) and (d) of this section, the grant recipient may use grant funds to pay administrative expenses associated with providing HWWS loans.

(b) Administrative expenses incurred in any calendar year which exceed ten percent of the HWWS loans made by the grant recipient during that same period do not qualify for reimbursement.

(c) Administrative expenses incurred prior to the execution of the grant agreement by RUS do not qualify for reimbursement.

(d) Allowability of administrative expense costs shall be determined in accordance with 7 CFR 3019.27.

Subpart C—HWWS Loans

§ 1776.14 Eligibility to receive a HWWS loan.

(a) The loan recipient must be an eligible individual.

(b) The loan recipient must either own and occupy the home being improved with the proceeds of the HWWS loan, or be occupying the home as the purchaser under a legally enforceable land purchase contract which is not in default by either the seller or the purchaser.

(c) The home using the water well system being funded from proceeds of the HWWS loan must be located in a rural area.

(d) The water well system being funded from the proceeds of the HWWS loan may not be associated with the construction of a new dwelling.

(e) The water well system being funded from the proceeds of the HWWS loan may not be used to substitute for water service available from collective water systems. Example: Loan recipient wishes to restore an old well which had been abandoned when the dwelling was connected to a water line belonging to a water district.

(f) A loan recipient must not be suspended or debarred from participation in Federal programs.

§ 1776.15 Terms of loans.

(a) HWWS loans under this part—

(1) Shall have an interest rate of 1 percent;

(2) Shall have a term not to exceed 20 years; and

(3) Shall not exceed $8,000 for each household water well system.

(b) The grant recipient must set forth the HWWS loan terms in written documentation signed by the loan recipient.

(c) Grant recipients must develop and use HWWS loan documentation that conforms to the terms of this part, the grant agreement, and the laws of the state or states having jurisdiction.

§ 1776.16 Loan servicing.

(a) If RUS determines that HWWS loans may be serviced by CSC, then the grant recipient will enter into an agreement with the Centralized Servicing Center for servicing all HWWS loans made from the revolving loan fund. All HWWS loan payments will be received by and processed at the Centralized Servicing Center. The grant recipient will be charged a fee for this service, and such fee should be included in the projected financial statements and work plan submitted as part of the grant application. This fee may be reimbursed as an administrative expense as provided in § 1776.13.

(b) If RUS determines that CSC is not able to service HWWS loans, then the grant recipient shall be responsible for servicing, or causing to be serviced, all HWWS loans. Servicing will include preparing loan agreements, processing loan payments, reviewing financial statements and debt reserves balances, and other responsibilities such as enforcement of loan terms. Loan servicing will be in accordance with the work plan approved by RUS when the grant is awarded for as long as any loan made in whole or in part with RUS grant funds is outstanding.

§ 1776.17 Revolving loan fund maintenance.

For as long as any part of the HWWS grant remains available for lending, and loans made from the revolving loan fund have an outstanding balance due, the grant recipient must maintain the revolving loan fund for the purposes set forth in § 1776.13.

(a) All HWWS grant funds received by a grant recipient must be deposited into the revolving loan fund.

(b) The grant recipient may transfer additional assets into the revolving loan fund.

(c) All cash and other assets of the revolving loan fund shall be deposited in a separate bank account or accounts.

(d) No cash or other assets of any other fund maintained by the grant recipient shall be commingled with the cash and other assets of the revolving loan fund.

(e) All moneys deposited in such bank account or accounts shall be money of the revolving loan fund.

(f) Loans to loan recipients are advanced from the revolving loan fund.

(g) The receivables created by making loans, the grant recipient's security interest in collateral pledged by loan recipients, collections on the receivables, interest, fees, and any other income or assets derived from the operation of the revolving loan fund are a part of the revolving loan fund.

(h) The portion of the revolving loan fund that consists of HWWS grant funds, on a last-in-first-out basis, may only be used for those purposes set forth in this part.

(i) The grant recipient must submit an annual budget of proposed administrative costs for RUS approval. The amount removed from the revolving loan fund for administrative costs in any year must be reasonable, must not exceed the actual cost of operating the revolving loan fund, including loan servicing and providing technical assistance, and must not exceed the amount approved by RUS in the grant recipient's annual budget.

(j) A reasonable amount of revolved funds must be used to create a reserve for bad debts. Reserves should be accumulated over a period of years. The total amount should not exceed maximum expected losses, considering the quality of the grant recipient's portfolio of loans. Unless the grant recipient provides loss and delinquency records that, in the opinion of RUS, justifies different amounts, a reserve for bad debts of 6 percent of outstanding loans must be accumulated over 3 years and then maintained as set forth in the grant agreement.

(k) Any cash in the revolving loan fund from any source that is not needed for debt service, approved administrative costs, or reasonable reserves must be available for additional loans to loan recipients.

(l) All reserves and other cash in the revolving loan fund not immediately needed for loans to loan recipients or other authorized uses must be deposited in accounts in banks or other financial institutions. Such accounts must be fully covered by Federal deposit insurance or fully collateralized with U.S. Government obligations, and must be interest bearing. Any interest earned thereon remains a part of the revolving loan fund.

§ 1776.18 OMB control number.

The information collection requirements in this part are approved by the Office of Management and Budget (OMB) and assigned OMB control number 0572–0139.

Dated: September 2, 2004.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. 04–22448 Filed 10–5–04; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1783

RIN 0572–AB95

Grant Program To Establish a Fund for Financing Water and Wastewater Projects (Revolving Fund Program (RFP))

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Utilities Service (RUS or the Agency) is issuing a regulation to establish the Grant Program to Establish a Fund for Financing Water and Wastewater Projects (Revolving Fund Program (RFP)) as authorized by the Consolidated Farm and Rural Development Act (CONACT), as amended by section 6002 of the Farm Security and Rural Investment Act of 2002 (Farm Bill). The Secretary may make grants to qualified, private, non-profit entities. Grant Recipients will make loans to eligible entities to finance pre-development costs associated with proposed water and wastewater projects or with existing water and wastewater systems, and short-term costs incurred for replacement equipment, small-scale extension of services, or other small capital projects that are not part of the regular operations and maintenance activities of existing water and wastewater systems.

DATES: This rule will become effective November 22, 2004, unless RUS receives written adverse comments or a written notice of intent to submit adverse comments on or before November 5, 2004. If RUS receives such comments or notice, the Agency will publish a timely notice in the **Federal Register** withdrawing the rule. Comments received will be considered under the proposed rule published in this edition of the **Federal Register** in the proposed rule section. A second public comment period will not be held. Comments must be received by RUS or carry a postmark or equivalent no later than November 5, 2004. Comments regarding the information collection requirements under the Paperwork Reduction Act must be received on or before December 6, 2004, to be assured of consideration.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instruction for submitting comments.
- Agency Web Site: *http://www.usda.gov/rus/index2.Comments.htm.* Follow the instructions for submitting comments.
- E-mail: *RUSComments@usda.gov.* Include in the subject line of the message ''7 CFR 1783.''
- Mail: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, STOP 1522, Washington, DC 20250–1522.
- Hand Delivery/Courier: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., Room 5168–S, Washington, DC 20250–1522.

Instructions: All submissions received must include ''Rural Utilities Service'' and the subject heading ''7 CFR 1783.'' All comments received must identify the name of the individual (and the name of the entity, if applicable) who is submitting the comment. All comments received will be posted without change to *http://www.usda.gov.rus.index2.Comments.htm,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Stephen Saulnier, Loan Specialist, Water Programs Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2235–S, Stop 1570, Washington, DC 20250–1570. Telephone (202) 690–2526. E-Mail: *stephen.saulnier@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This direct 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 (OMB).

Executive Order 12372

This rule is not subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs'', as implemented under USDA's regulations at 7 CFR Part 3015.

Executive Order 12988

This direct final rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of the Executive Order. In addition all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to the rule; and, in accordance with Section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)) administrative appeal procedures, if any are required, must be exhausted prior to initiating any action against the Department or its agencies.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 553(a)(2), this proposed rule related to grants is exempt from the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, including the requirement to provide prior notice and an opportunity for public comment. Because this proposed rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on states and local governments. Therefore, consultation with states is not required.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) RUS is requesting comments on the information collection incorporated in this proposed rule. Comments on this information collection must be received by December 6, 2004.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the

agency's estimate of the burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: 7 CFR part 1783, Revolving Fund Program.

OMB Control Number: 0582–0138.

Type of Request: Approval for collection.

Abstract: The information collections contained in this rule are requirements prescribed by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1926(a)), as amended.

The primary reason for the promulgation of the proposed collection of information under this rule is to implement the Revolving Fund Program.

RUS applicants would submit an application for consideration of grant funding, and if selected for funding, submit quarterly reports, as prescribed by the rule. The collection of information is only that information which is essential for RUS to award and service grants in the best interest of the Government.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8.2 hours per response.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents: 5.

Estimated Number of Responses per Respondents: 7.6.

Estimated Total Annual Burden on Respondents: 313 hours.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, Rural Utilities Service. Telephone: (202) 720–7853.

Send comments regarding this information collection requirement to Richard Annan, Acting Director, Program Development and Regulatory Analysis, USDA, Rural Utilities Service, 1400 Independence Ave., SW., Room 5168, Stop 1522, Washington, DC 20250–1522.

Comments must be received on or before 30 days of publication in the **Federal Register**. All comments will become a matter of public record.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The programs described by this proposed rule are listed in the Catalog of Federal Domestic Assistance Programs under numbers 10–864, Revolving Fund Program Grant. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC, 20402–9325, telephone number (202) 512–1800.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Background

On May 13, 2002, the Farm Security and Rural Investment Act of 2002 (Farm Bill) was signed into law as Public Law 107–171. Section 6002 of the Farm Bill amended the Consolidated Farm and Rural Development Act (CONACT), by adding a grant program to establish a revolving loan fund. The Secretary may make grants to qualified, private, non-profit entities. The grant recipients will use the grant funds to establish a revolving loan fund. The loans will be made to eligible entities to finance predevelopment costs of water or wastewater projects, or short-term small capital projects not part of the regular operation and maintenance of current water and wastewater systems.

Eligible entities for the revolving loan fund will be the same entities eligible to obtain a loan, loan guarantee, or grant from the Rural Utilities Service Water and Waste Disposal and Wastewater loan and grant programs. The amount of financing to an eligible entity shall not exceed $100,000.00 and shall be repaid in a term not to exceed 10 years. The rate shall be determined in the approved grant work plan.

No funds were appropriated for the grant program for fiscal years (FY) 2002 and FY 2003. However, the Consolidated Appropriations Act, 2004 (Pub. L. 108–199) included $500,000.00 for the grant program. Therefore, we are developing the regulation to implement the grant program.

The Administrator of RUS is required to prescribe regulations to implement the provisions of the CONACT. Rural Utilities Service will be relying heavily on existing regulations within the Rural Development Program in order to develop regulations for this new program.

A Notice of Inquiry was published in the **Federal Register**, Thursday, February 12, 2004 at 69 CFR Part 6937, requesting interested parties to review the CONACT and comment on six topics. The comment period closed on March 15, 2004. RUS received responses from six parties; National Rural Water Association (NRWA), Association of State Drinking Water Administrators (ASDWA), Rural Community Assistance Program (RCAP), Midwest Assistance Program (MAP), Community Resource Group (CRG), and South Central Illinois Regional Planning & Development Commission (SCIRP&DC). The topics, comments, and Agency responses as follows:

(1) RUS is seeking comments on a requirement for current lending experience of potential grant applicants.

ASDWA did not feel they were able to comment on this topic. SCIRP&DC was in favor of requiring current lending experience of potential grant applicants. CRG, MAP, and RCAP believe that the applicant should have the demonstrated capacity and financial ability to provide on-site technical assistance to the borrowers, both before and after a loan is made. RCAP further recommends that RUS base its criteria for determining applicants' qualifications on the criteria outlined in regulations for USDA's Intermediary Relending Program (7 CFR Part 4274). RCAP believes this would allow the Agency flexibility to award a grant to a non-profit that may not have significant loan making experience.

The Agency's position is that in order to fulfill its fiduciary and oversight responsibilities, the primary experience for an applicant is a successful record of making and servicing loans.

(2) RUS is also interested in comments regarding a proposed minimum 20 percent matching funds contribution by the grant recipient. Should in-kind contributions be accepted as part of the 20 percent minimum?

All respondents except NRWA agree with a minimum 20 percent match. NRWA did not comment on this topic. CRG believes that above a 20 percent match should not favor one area of the country above another and the cash match should be proportionate to every loan. All loan losses should come out of

the matching funds. MAP recommends that more points should be given for a greater than 20 percent match only when two or more applications are from the same region of the country. RCAP recommends that priority points be awarded for a match above 20 percent.

The Agency's position is to require a minimum 20 percent matching funds contribution by the grant recipient. Contributions by the grant recipient signal a serious intent to invest in the project as well as increasing the overall size of the loan fund from which loans shall be made, thereby increasing the number of potential loan recipients. The Agency agrees with RCAP's recommendation and will award priority points for greater than 20 percent match.

(3) RUS is interested in comments regarding the percentage of the grant funds that may be used for administrative or servicing fees.

ASDWA believes that 6 percent would be reasonable although the current allowable percentage for the Drinking Water State Revolving Fund is 4 percent. SCIRP&DC recommends a rate of 2 to 3 percent is adequate. SCIRP&DC further recommends 0.5 percent be incorporated into the loan rate for debt servicing. CRG believes that no Federal or match funds should be used for administrative fees. Interest and fees earned from loans should be used to fund loan loss reserves. MAP believes that allowable eligible costs as described in the authorizing Farm Bill language are adequate. RCAP recommends that Federal funds not be used for administrative costs. Administrative costs should come from matching funds. NRWA believes that administrative costs and overhead should be minimal.

The Agency's position is to maximize the use of limited grants dollars in order to fund the greatest number of projects possible, therefore, grant funds may not be used for payment of the intermediary's administrative cost or expenses. Interest collected from loans made by the intermediary may be used to cover reasonable administrative costs.

(4) RUS is seeking comments on the issue of the revolving fund paying up to a maximum of 75 percent of the project costs, with the other 25 percent of project costs paid from non-Federal sources.

ASDWA had no objection. SCIRP&DC has some confusion between the organization's match funding a maximum of 75 percent of project costs. CRG believes limiting Federal participation to no more than 75 percent of project costs is reasonable. Both MAP and RCAP believe that the 75 percent maximum may restrict or deter borrowers from seeking financing through this program. MAP further believes that this requirement will create a financial burden to low-income communities.

The Agency's response is to establish a maximum loan amount of the lesser of $100,000 or 75 percent of the total costs of the project in order to focus program funding of small capital projects. The authorizing legislation sets a maximum loan amount of $100,000. The Agency believes that the lesser of $100,000 or 75 percent of the cost of the project will allow for a greater number of loans to be made and also comply with the authorizing legislation.

(5) RUS is interested in comments regarding the use of the Central Servicing Center (*http://www.rurdev.usda.gov/rhs/sfh/bor_sfh.htm*) for servicing loans made from the revolving loan fund, to include processing loan payments, reviewing financial statements, and other responsibilities involved in loan servicing.

ASDWA had no comment. SCIRP&DC wants to service the loans in house and has a proven track record. MAP recommends not utilizing the Central Servicing Center. Both CRG and RCAP believe maintaining servicing in house allows the lender to stay close to borrowers and alerts the lender to any potential problems. Also, using a third party for servicing would raise costs.

The Agency agrees with SCIRP&DC, MAP, CRG, and RCAP that the grant recipient should service loans made from the Revolving Fund Program. The direct final rule, 7 CFR Part 1783, does not require loans made from the Revolving Fund Program to be serviced by the Central Servicing Center.

(6) RUS is also seeking comments on the definition of eligible and ineligible projects for the loans made from the revolving loan fund.

ASDWA wants the lender to consult with state agencies in defining eligible projects. SCIRP&DC believes that reasonable administrative fees for providing guidance/technical assistance should be an eligible project. CRG recommends that pre-development, upgrades, or extending service should have the same eligibility requirements as the regular RUS Water and Waste Disposal Loan Program. RCAP believes that projects financed under this program should be coordinated with the State Rural Development Office. RCAP also presents a long list of eligible projects they feel should be included.

The Agency is required to follow the definition of eligible as set forth in the authorizing legislation of the CONACT. The Agency will, to the extent possible within the parameters of the authorizing legislation, be flexible in determining the specific projects that qualify as eligible.

General Comments

(1) ASDWA believes that, historically, the primary vehicle to provide low-interest loans water and wastewater systems is through the Drinking Water State Revolving Funds and the Clean Water State Revolving Funds and that Federal funds should be channeled through these mechanisms. ASDWA believes all water projects should be aligned with state drinking water priorities.

The Agency's response is that it is not authorize to roll funds for the Revolving Fund Program into the existing USDA loan and grant program or through the Drinking Water State Revolving Funds and the Clean Water State Revolving Funds.

(2) SCIRP&DC suggest that revolving fund grants be made to regional planning commissions that are familiar with state and local funding options. NRWA believes funds for the Revolving Fund Program would be more effectively used within the existing USDA loan and grant program. Cost of administering such a small program will significantly outweigh any potential benefits.

The Agency's response is that the CONACT, as amended by the Farm Bill, added a grant program to establish a revolving loan fund. The Secretary may make grants to qualified, private, non-profit entities, not state agencies. As with current RUS water and waste disposal projects, loans made under this program will be coordinated with state agencies.

All comments received were taken into consideration in developing the regulation.

List of Subjects in 7 CFR Part 1783

Business and industry, Community development, Community facilities, Grant programs-housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

For reasons set forth in the preamble, RUS amends chapter XVII of Title 7 of the Code of Federal Regulations by adding a new Part 1783 to read as follows:

PART 1783—REVOLVING FUNDS FOR FINANCING WATER AND WASTEWATER PROJECTS (REVOLVING FUND PROGRAM)

Subpart A—General

Sec.
1783.1 What is the purpose of the Revolving Fund Program?
1783.2 What Uniform Federal Assistance Provisions apply to the Revolving Fund Program?
1783.3 What definitions are used in this regulation?
1783.4 [Reserved]

Subpart B—Revolving Loan Program Grants

1783.5 What are the eligibility criteria for grant recipients?
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1783.10 What is the grant agreement?
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Subpart C—Revolving Loan Program Loans

1783.14 What are the eligibility criteria for RFP loan recipients?
1783.15 What are the terms of RFP loans?
1783.16 How will loans from the revolving fund be serviced?

Authority: 7 U.S.C. 1926 (a)(2)(B).

Subpart A—General

§ 1783.1 What is the purpose of the Revolving Fund Program?

This part sets forth the policies and procedures for making grants to qualified private, non-profit entities to capitalize revolving funds for the purpose of providing financing to eligible entities for pre-development costs associated with proposed water and wastewater projects or with existing water and wastewater systems, and short-term costs incurred for replacement equipment, small-scale extension of services, or other small capital projects that are not part of the regular operations and maintenance activities of existing water and wastewater systems.

§ 1783.2 What Uniform Federal Assistance Provisions apply to the Revolving Fund Program?

(a) This program is subject to the general provisions that apply to all grants made by USDA and that are set forth in 7 CFR Part 3015—Uniform Federal Assistance Regulations.

(b) This program is subject to the uniform administrative requirements that apply to all grants made by USDA to non-profit organizations and that are set forth in 7 CFR Part 3019—Uniform Administrative Requirements for Grants And Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.

(c) This program is subject to OMB Circular No. A–122 (Revised): Cost Principles for Non-Profit Organizations.

§ 1783.3 What definitions are used in this regulation?

Administrative expenses means expenses incurred by a grant recipient that are of the type more particularly described in § 1783.12.

Applicant means a private, non-profit organization that applies for an RFP grant under this part.

CONACT means the Consolidated Farm and Rural Development Act.

Eligible entity means an entity eligible to obtain a loan, loan guarantee or grant under paragraph 1 or paragraph 2 of section 306(a) the CONACT (codified at 7 U.S.C. 1926(a)(1) and (2)).

Grant agreement means the contract between RUS and the grant recipient which sets forth the terms and conditions governing a particular grant awarded under this part.

Grant recipient means a private, non-profit entity that has been awarded a grant under this part.

Loan recipient means an eligible entity that has received an RFP loan.

Revolved funds means the cash portion of the revolving loan fund that is not composed of RFP grant funds, including cash comprising repayments of RFP loans, fees relating to RFP loans and interest collected on RFP loans.

Revolving loan fund means the loan fund established by the grant recipient to carry out the purposes of this part, such fund comprising the proceeds of an RFP grant and other related assets.

RFP means Revolving Fund Program.

RFP grant means a grant from RUS to a grant recipient under this part.

RFP loan means a loan from a grant recipient using the direct or indirect proceeds of an RFP grant awarded under this part.

Rural and rural area means a city, town or unincorporated area that has a population of no more than 10,000 inhabitants, according to the latest decennial census of the United States.

RUS means the Rural Utilities Service, a Federal agency delivering the USDA's Rural Development Utilities Program.

USDA means the United States Department of Agriculture.

§ 1783.4 [Reserved]

Subpart B—Revolving Loan Program Grants

1783.5 What are the eligibility criteria for grant recipients?

(a) The applicant must be a private entity.

(b) The applicant must be organized as a non-profit entity.

(c) The applicant must have the legal capacity and lawful authority to perform the obligations of a grantee under this part.

Example 1 to paragraph (c): If the organization is incorporated as a non-profit corporation, it must have corporate authority under state law and its corporate charter to engage in the practice of making loans to legal entities.

Example 2 to paragraph (c): If the organization is an unincorporated association, state law may prevent the organization from entering into binding contracts, such as a grant agreement.

(d) The applicant must have sufficient expertise and experience in making and servicing loans to assure the likelihood that the objectives of this part can be achieved.

§ 1783.6 When will applications for grants be accepted?

In Fiscal Year 2004, applications will be accepted for this RFP grant program from October 6, 2004, until December 6, 2004, at which time the initial application period shall close. An applicant may withdraw, substitute, amend or supplement its application at any time prior to the closing of the initial application period. Once the initial application period has closed, all applications shall be considered final. For subsequent fiscal years, if any funds for this program are available, the Secretary will publish a notice to that effect. The notice will establish the period during which applications for such funds may be submitted for consideration.

§ 1783.7 What is the grant application process?

(a) The applicant must complete and submit the following items to RUS to apply for a grant under this part:

(1) Application for Federal Assistance: *Standard Form 424;*

(2) Budget Information—Non-Construction Programs: *Standard Form 424A;*

(3) Assurances—Non-Construction Programs: *Standard Form 424B;*

(4) Evidence of applicant's legal existence and authority in the form of certified copies of organizational documents and a certified list of directors and officers with their respective terms;

(5) Evidence of tax exempt status, and

(6) Most recent annual audit conducted by an independent auditor.

(b) The applicant must submit a written work plan that demonstrates the ability of the applicant to make and service loans to eligible entities under this program and the feasibility of the applicant's lending program to meet the objectives of this part.

(c) The applicant should submit a narrative establishing the basis for any claims that it has substantial expertise in making and servicing loans. The Secretary will give priority to an applicant that demonstrates it has substantial experience of this type.

(d) The applicant may submit such additional information as it elects to support and describe its plan for achieving the objectives of the part.

§ 1783.8 What are the acceptable methods for submitting applications?

(a) Applications for RFP grants may be submitted by U.S. Mail. Applications submitted by mail must be addressed as follows: Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1548, Washington, DC 20250–1548. The outside of the application should be marked: ''Attention: Assistant Administrator, Water and Environmental Programs.'' Applications submitted by mail must be postmarked not later than the filing deadline to be considered during the period for which the application was submitted.

(b) In lieu of submitting an application by U.S. Mail, an applicant may file its application electronically by using the Federal Government's eGrants Web site (Grants.gov) at *http://www.grants.gov.* Applicants should refer to instructions found on the Grants.gov Web site for procedures for registering and using this facility. Applicants who have not previously registered on Grants.gov should allow a sufficient number of business days to complete the process necessary to be qualified to apply for Federal Government grants using electronic submissions. Electronic submissions must be filed not later than the filing deadline to be considered during the period for which the application was submitted.

(c) The methods of submitting applications may be changed from time to time to reflect changes in addresses and electronic submission procedures. Applicants should refer to the most recent notice of funding availability for notice of any such changes. In the event of any discrepancy, the information contained in the notice must be followed.

§ 1783.9 What are the criteria for scoring applications?

(a) Applications that are incomplete or ineligible will be returned to the applicant, accompanied by a statement explaining why the application is being returned.

(b) Promptly after an application period closes, all applications that are complete and eligible will be ranked competitively based on the following scoring criteria:

(1) Degree of expertise and successful experience in making and servicing commercial loans, with a successful record, for the following number of full years:

(i) At least 1 but less than 3 years—5 points

(ii) At least 3 but less than 5 years—10 points

(iii) At least 5 but less than 10 years—20 points

(iv) 10 or more years—30 points

(2) Extent to which the work plan demonstrates a well thought out, comprehensive approach to accomplishing the objectives of this part, clearly defines who will be served by the project, clearly articulates the problem/issues to be addressed, identifies the service area to be covered by the RFP loans, and appears likely to be sustainable. Up to 40 points.

(3) Percentage of applicant contributions. Points allowed under this paragraph will be based on written evidence of the availability of funds from sources other than the proceeds of an RFP grant to pay part of the cost of a loan recipient's project. In-kind contributions will not be considered. Funds from other sources as a percentage of the RFP grant and points corresponding to such percentages are as follows:

(i) Less than 20%—ineligible

(ii) At least 20% but less than 50%—10 points

(iii) 50% or more—20 points

(4) Extent to which the goals and objectives are clearly defined, tied to the work plan, and are measurable. Up to 15 points.

(5) Lowest ratio of projected administrative expenses to loans advanced. Up to 10 points.

(6) The evaluation methods for considering loan applications and making RFP loans are specific to the program, clearly defined, measurable, and are consistent with program outcomes. Up to 20 points.

(7) Administrator's discretion, considering such factors as creative outreach ideas for marketing RFP loans to rural residents; the amount of funds requested in relation to the amount of needs demonstrated in the work plan; previous experiences demonstrating excellent utilization of a revolving loan fund grant; and optimizing the use of agency resources. Up to 10 points.

(c) All qualifying applications under this part will be scored based on the criteria contained in this section. Awards will be made based on the highest ranking applications and the amount of financial assistance available for RFP grants. All applicants will be notified of the results in writing on form AD–622.

§ 1783.10 What is the grant agreement?

RUS and the grant recipient will enter into a contract setting forth the terms and conditions governing a particular RFP grant award. RUS will furnish the form of grant agreement. No funds awarded under this part shall be disbursed to the grant recipient before the grant agreement is binding and RUS has received a fully executed counterpart of the grant agreement.

§ 1783.11 What is the revolving loan fund?

The grant recipient shall establish and maintain a revolving loan fund for the purposes set forth in § 1783.12. The revolving loan fund shall be comprised of revolving loan fund grant funds and the grant recipient's contributed funds. All revolving loan fund loans made to loan recipients shall be drawn from the revolving loan fund. All revolving loan fund loans shall be serviced and the revolving loan fund maintained, in accordance with this part and applicable law.

§ 1783.12 What are eligible uses of grant proceeds?

(a) Grant proceeds shall be used solely for the purpose of establishing the revolving loan fund to provide loans to eligible entities for:

(1) Pre-development costs associated with proposed water and wastewater projects or with existing water and wastewater systems, and

(2) Short-term costs incurred for replacement equipment, small-scale extension of services, or other small capital projects that are not part of the regular operations and maintenance activities of existing water and wastewater systems.

(b) A grant recipient may not use grant funds in any manner inconsistent with the terms of the grant agreement.

§ 1783.13 What administrative expenses may be funded with grant proceeds?

RFP grant funds may not be used for any purposes not described in § 1783.12, including, without limitation, payment or reimbursement of any of the grant recipient's administrative costs or expenses. Administrative expenses may,

however, be paid or reimbursed from revolving loan fund assets that are not RFP grant funds, including revolved funds and cash originally contributed by the grant recipient.

Subpart C—Revolving Fund Program Loans

§ 1783.14 What are the eligibility criteria for RFP loan recipients?

(a) A loan recipient must be an eligible entity as defined in § 1783.3.

(b) The loan recipient must be unable to finance the proposed project from their own resources or through commercial credit at reasonable rates and terms.

(c) The loan recipient must have or will obtain the legal authority necessary for owning, constructing, operating and maintaining the proposed service or facility, and for obtaining, giving security for, and repaying the proposed loan.

(d) The project funded by the proceeds of an RFP loan must be located in, or the services provided as the result of such project must benefit, rural areas.

§ 1783.15 What are the terms of RFP loans?

(a) RFP loans under this part—

(1) Shall have an interest rate that is determined by the grant recipient and approved by RUS;

(2) Shall have a terms not to exceed 10 years; and

(3) Shall not exceed the lesser of $100,000 or 75 percent of the total cost of a project. The total outstanding balance for all loans under this program to any one entity shall not exceed $100,000.

(b) The grant recipient must set forth the RFP loan terms in written documentation signed by the loan recipient.

(c) Grant recipients must develop and use RFP loan documentation that conforms to the terms of this part, the grant agreement, and the laws of the state or states having jurisdiction.

§ 1783.16 How will the loans given from the revolving fund be serviced?

The grant recipient shall be responsible for servicing all loans, to include preparing loan agreements, processing loan payments, reviewing financial statements and debt reserves balances, and other responsibilities such as enforcement of loan terms. Loan servicing will be in accordance with the work plan approved by the Agency when the grant is awarded for as long as any loan made in whole or in part with Agency grant funds is outstanding.

Dated: September 2, 2004.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

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FEDERAL ELECTION COMMISSION

11 CFR Parts 104 and 110

[Notice 2004–13]

Presidential Inaugural Committee Reporting and Prohibition on Accepting Donations From Foreign Nationals

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is promulgating new rules regarding disclosure requirements for Presidential inaugural committees. The new rules also ban inaugural committees from accepting donations from foreign nationals. These regulations implement requirements of the Bipartisan Campaign Reform Act of 2002. Further information is provided in the Supplementary Information that follows.

EFFECTIVE DATE: November 5, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Brad C. Deutsch, Assistant General Counsel, or Ms. Esa L. Sferra, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 308 of the Bipartisan Campaign Reform Act of 2002 (''BCRA''), Public Law 107–1555, 116 Stat. 81 (March 27, 2002), amended 36 U.S.C. 510 by establishing new requirements for Presidential inaugural committees regarding reporting and acceptance of certain donations. The Commission is issuing these final rules to implement these new requirements for inaugural committees.

The Presidential inaugural committee is appointed by the President-elect to be in charge of the Presidential inaugural ceremony and the functions and activities connected with the ceremony. 36 U.S.C. 501(1). The inaugural committee plans and finances all inaugural events, other than the swearing-in ceremony at the Capitol and the luncheon honoring the President and Vice-President,[1] including opening ceremonies, the parade, galas, and balls. The inaugural committee also receives special privileges in the District of Columbia beginning five days before and ending four days after the inaugural ceremony. Chapter 5 of title 36 of the United States Code authorizes Congress to make appropriations for the inauguration, however, the appropriations are limited to funding for the District of Columbia to pay for the costs of municipal services associated with the inaugural events. Accordingly, the inaugural committee accepts donations to cover the costs associated with all other inaugural events.

BCRA section 308 amended 36 U.S.C. 510 to require the inaugural committee to disclose, in a report filed with the Commission within 90 days after the inaugural ceremony, certain donations made to the inaugural committee, and to ban the inaugural committee from accepting donations from foreign nationals. Accordingly, the Commission is adding new 11 CFR 104.21 to its reporting rules, in 11 CFR part 104, to set forth inaugural committee reporting requirements. The Commission is also adding to the rules regarding foreign nationals at 11 CFR 110.20 a new paragraph banning both the acceptance by inaugural committees of donations from foreign nationals, as well as the making of such donations.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on inaugural committees were transmitted to Congress on September 30, 2004.

Explanation and Justification

On April 7, 2004, the Commission published a Notice of Proposed Rulemaking (''NPRM'') in the **Federal Register** containing proposed rules to implement BCRA's amendment to 36 U.S.C. 510 that requires disclosure of certain donations to Presidential inaugural committees and bans the acceptance of donations from foreign nationals by Presidential inaugural committees. 69 FR 18301 (April 7, 2004). The Commission sought comments on several issues raised in the NPRM and on the proposed rules in general. The comment period ended May 7, 2004. The Commission received three comments, two from individuals

[1] The Joint Congressional Committee on Inaugural Ceremonies, which is formed by a Congressional resolution every four years, several months in advance of the Presidential election, plans and finances the Presidential inaugural events held at the Capitol, including the swearing-in ceremony and the Congressional luncheon to honor the President and Vice-President.

and a letter from the Internal Revenue Service. The Internal Revenue Service letter indicated that it had ''no comments.''

I. 11 CFR 104.21 Reporting by Inaugural Committees

BCRA section 308 sets forth for the first time a reporting scheme for inaugural committees. Paragraph (a) of new 11 CFR 104.21 defines the terms ''inaugural committee'' and ''donation.'' Paragraph (b) sets forth the initial letter-filing for inaugural committees. Paragraph (c) contains reporting requirements. Paragraph (d) sets forth recordkeeping requirements similar to the Commission's regulations for other persons who file reports with the Commission.

1. 11 CFR 104.21(a)—Definitions

Paragraph (a)(1) of 11 CFR 104.21 defines ''inaugural committee.'' The definition is identical to that found in 36 U.S.C. 501(1) and in the municipal regulations of the District of Columbia (*see* D.C. Mun. Regs., tit. 24, section 899).[2] The definition states that an ''inaugural committee'' is the committee appointed by the President-elect to be in charge of the Presidential inaugural ceremony, and functions and activities connected with the ceremony. This definition presumes that only one inaugural committee will be named by the President-elect every four-years.

Paragraph (a)(2) of 11 CFR 104.21 defines ''donation'' by reference to the existing definition of ''donation'' in 11 CFR 300.2(e). The NPRM proposed a definition of ''donation'' that was similar to 11 CFR 300.2(e), but applied only to inaugural committees. The Commission received no comments on this definition of donation. The Commission has decided to define ''donation'' in the final rules by simply referring to the existing definition in section 300.2(e), rather than creating a separate, and potentially confusing definition applicable only to inaugural committees.

2. 11 CFR 104.21(b)—Initial Letter-Filing by Inaugural Committees

New 11 CFR 104.21(b) sets forth the steps necessary for a committee appointed by the President-elect to be considered the inaugural committee. BCRA section 308 expressly provides that a committee must ''agree to'' abide by the applicable reporting requirements and the ban on acceptance of donations from foreign nationals in order to be considered the inaugural committee. 36 U.S.C. 510(a). The Commission interprets this statutory language to require an affirmative act on the part of the committee wishing to be recognized as the official inaugural committee. Therefore, inaugural committees must file a signed letter with the Commission stating that the committee agrees to abide by the requirements applicable to inaugural committees. In the letter, an inaugural committee must designate a person as its point of contact with the Commission.

The Commission sought comment on whether such a letter-filing is necessary and received no comments. The Commission also sought comments on whether a new FEC form is preferable to a letter-filing, and whether an inaugural committee should be free to designate a person other than its chairperson or other officer as a point of contact with the Commission. One commenter stated that a letter-filing is preferable because it reduces paperwork. The Commission agrees that a letter-filing satisfies the conditions set forth in BCRA's statutory language and that a new FEC form is unnecessary. The Commission concludes that the chairperson or any other officer is an appropriate person to serve as an inaugural committee's point of contact because such person is involved in the administration of the committee. The new rule provides flexibility for an inaugural committee to appoint whichever officer might be the most knowledgeable about matters relevant to FEC filing requirements and interactions.

Accordingly, the new rule requires an inaugural committee to file a letter with the Commission within 15 days of being appointed by the President-elect. Fifteen days is the same amount of time as the President-elect had to designate a principal campaign committee after becoming a candidate. *See* 2 U.S.C. 432(e)(1) and 11 CFR 102.12(a). The letter-filing must contain the name and address of the inaugural committee, the name of its chairperson or other officer who will serve as the point of contact for the Commission, and a statement indicating that the inaugural committee will comply with the reporting and recordkeeping requirements in 11 CFR 104.21(c) and (d) and the ban on accepting donations from foreign nationals in 11 CFR 110.20(j). The letter must be signed by an official of the inaugural committee with authority to make the required statement regarding compliance with Commission regulations.

Additionally, new paragraph (b) sets forth procedures for the assignment of a FEC committee identification number (''FECID'') upon receipt by the Commission of an inaugural committee's letter-filing, and sets forth the requirement that the inaugural committee must include the FECID in any subsequent communications or filings with the Commission. This additional language mirrors the language of 11 CFR 102.3(c), which contains similar procedures and requirements for political committees, and will help the Commission track and organize information provided by inaugural committees for public use.

3. 11 CFR 104.21(c)—Reporting Requirements for Inaugural Committees

New 11 CFR 104.21(c) sets forth the inaugural committee reporting requirements that satisfy the disclosure provisions contained in BCRA section 308. To facilitate inaugural committee reporting, the Commission is creating a new form, FEC Form 13, which an inaugural committee must use to file its report containing the required information regarding donations to the committee.

New paragraph (c)(1) requires the chairperson or other officer identified in the letter-filing required by paragraph (b) of 11 CFR 104.21 to be responsible for signing (or, in the case of electronic filing, verifying) and filing the report. The Commission sought comment on the signature requirement and received no comments. Although BCRA section 308 does not explicitly require a signature on the report, the Federal Election Campaign Act of 1971, as amended, requires that the Commission ''provide methods * * * for verifying designations, statements, and reports * * *.'' 2 U.S.C. 434(a)(11)(C). Additionally, the Commission's reporting regulations provide generally that ''[e]ach individual having the responsibility to file a designation, report or statement * * * shall sign the original designation, report or statement,'' unless it is electronically filed. 11 CFR 104.14(a). Accordingly, the Commission requires a signature on (or, in the case of electronic filing, a verification for) each FEC Form 13 in accordance with 11 CFR 104.14(a). The signature on (or verification of) the filing signifies that the inaugural committee's report, or any supplement thereto, is complete and correct as of the date of the filing.

New paragraph (c)(2) implements the statutory requirement that an inaugural committee must file a report with the Commission no later than 90 days after the date of the inaugural ceremony. In

[2] The District of Columbia has statutory authority to regulate many aspects of the activities of the inaugural committee, such as the inaugural parade route, public safety at inaugural events, and concession sales permits at inaugural events. *See* 36 U.S.C. 502, 503, and 505.

keeping with other reporting deadlines in Commission regulations, the new rule requires that the report be received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the 90th day after the date of the inaugural ceremony. *See generally,* 11 CFR 100.19(b).

Additionally, because BCRA requires an inaugural committee to disclose ''*any* donation of money or anything of value made to the committee in an aggregate amount equal to or greater than $200,'' 2 U.S.C. 510(b)(1) (emphasis added), the Commission has modified paragraph (c)(2) from the paragraph proposed in the NPRM to clarify that an inaugural committee must file supplements, as necessary, to ensure that it discloses each reportable donation, regardless of when the inaugural committee accepts such a donation. Accordingly, an inaugural committee must file a supplement with the Commission within 90 days of the date of the committee's last filing, of either its report or its most recent supplement. If an inaugural committee does not accept any reportable donations, or make any refunds, within 90 days of the end of the ''covering period'' of its last filing, as discussed below, then it does not need to file a supplement. However, if an inaugural committee accepts a reportable donation, or makes a refund, at any point thereafter, the committee must then file a supplement reporting such donation or refund within 90 days of accepting the donation or making the refund.

New paragraph (c)(3) states that all letters, reports, and amendments filed by inaugural committees must be filed with the Commission.

New paragraph (c)(4) sets forth the methods by which an inaugural committee may file its report and supplements. The Commission received no comments on whether inaugural committees should be required to file electronically. The Commission has concluded that inaugural committees are not subject to the Commission's mandatory electronic filing requirements because these requirements apply only if a person receives or makes, or has reason to expect to receive or make, in excess of $50,000 in contributions or expenditures in a calendar year. 11 CFR 104.18(a)(1). The funds accepted by an inaugural committee are donations, not contributions or expenditures, and therefore are not subject to mandatory electronic filing. Although, the final rules do not make inaugural committees subject to the Commission's mandatory electronic filing requirements, they do permit inaugural committees to use the Commission's electronic filing system on a voluntary basis under 11 CFR 104.18(b). Accordingly, inaugural committees may file their reports either on paper or electronically.

New paragraph (c)(5) requires an inaugural committee to file its report using new FEC Form 13.

New paragraph (c)(6) sets forth the information inaugural committees must disclose in their reports. Inaugural committees must report all donations accepted by them that aggregate $200 or more from a donor. 36 U.S.C. 510(b)(1). The statute also requires disclosure of (1) the name and address of each person making donations that aggregate $200 or more; (2) the amount of each such donation; and (3) the date that each such accepted donation was received. 36 U.S.C. 510(b)(2).[3] Accordingly, the Commission is requiring the itemization of each accepted donation of $200 or more, and each accepted donation, regardless of amount, from a person whose total donations equal or exceed $200. The Commission notes that donations include the entire amount paid for any ticket for an inaugural event, whether paid to the inaugural committee, or an agent thereof, such as a vendor hired by a committee.[4]

Under paragraph (c)(6), for each person (as defined in 11 CFR 100.10) making a reportable donation, an inaugural committee must report on Schedule A of FEC Form 13 the person's full name and mailing address, and the date of receipt and amount of each donation. In the case of an individual making a donation, ''full name'' means the individual's first name, middle name or initial, if available, and last name. In the case of all other persons, ''full name'' means the entity's full legal name. *See, e.g.*, 11 CFR 100.12. This disclosure requirement for inaugural committees is similar to the requirements applicable to political committees under 11 CFR 104.3(a)(4)(i).

To ensure accurate reporting, and to provide inaugural committees with a means to show compliance with the ban on acceptance of donations from foreign nationals, the Commission is requiring inaugural committees also to report refunds. Thus an inaugural committee must itemize each refund of a previously, or contemporaneously, reported donation.

Additionally, to enhance disclosure, inaugural committees must report aggregated information for all reported donations and refunds, which provides the public with information about an inaugural committee's total reportable activity from its appointment through the date covered in its most recent filing. Specifically, an inaugural committee must report a cumulative total of itemized donations, a cumulative total of itemized refunds, and a cumulative calculation of net donations, which is a calculation of total itemized donations minus total itemized refunds. This reporting requirement is similar to Commission regulations at 11 CFR 104.3(a), which requires political committees to disclose total contributions and total refunds.

Under paragraph (c)(6), an inaugural committee's report must itemize all reportable donations accepted and all refunds made from the date of its appointment by the President-elect through a date chosen by the inaugural committee that is within 15 days of the date the committee files its report. This ''covering period'' is included in the final rule to provide an inaugural committee with the flexibility of choosing a close-of-books date and a 15-day window during which it can prepare and finalize its report. Under this paragraph, supplements to a report also have a ''covering period,'' which starts on the day after the end of the covering period of the most recent filing and ends on a date, again chosen by the inaugural committee, that is within 15 days of the date the committee files any such supplement.

Inaugural committees must report the above information on Form 13, which consists of a Summary Page and Schedules A and B. The Summary Page provides a cumulative summary of the committee's total reportable activity from its appointment through the end of the covering period of the filing. An inaugural committee must provide on the Summary Page cumulative totals for (1) itemized donations, (2) itemized refunds, and (3) net donations (*i.e.* itemized donations minus any refunds). Schedules A and B of Form 13 provides detailed information about the committee's reportable activity during the covering period of the filing. An inaugural committee must itemize on Schedule A each previously unreported donation of $200 or more, as well as any donation from a person whose donations total $200 or more, and must itemize on Schedule B each refund of a previously, or contemporaneously, reported donation.

Additionally, an inaugural committee must designate on the Summary Page

[3] Although an inaugural committee is required only to report donations that have been *accepted* (*i.e.*, donations deposited into a committee's account), the statute requires that the committee report ''the date the donation is *received*,'' which may be different from the date the donation is accepted. 36 U.S.C. 510(b)(1)(B) (emphasis added).

[4] This approach is consistent with Commission regulations in 11 CFR 100.53 that indicate that the entire amount paid to attend a political committee fundraiser or political event is a contribution.

whether a filing constitutes its report or a supplement to its report, or an amendment correcting information in a previous filing.

Accordingly, paragraph (c)(6) states that each report, and any supplement thereto, filed by an inaugural committee must list (1) the ''covering period,'' (2) a cumulative summary of reported donations, refunds, and net donations, (3) an itemization of previously unreported donations that are $200 or more, and donations, regardless of amount, from a person whose donations aggregate $200 or more, and (4) an itemization of previously unreported refunds of all previously, or contemporaneously, reported donations.

Lastly, the Commission notes that neither BCRA nor the Commission's new reporting rules contemplate disclosure of disbursements by inaugural committees.

4. 11 CFR 104.21(d)—Recordkeeping

New 11 CFR 104.21(d) requires an inaugural committee to maintain records in accordance with the Commission recordkeeping requirements in 11 CFR 104.14. The Commission sought comments on whether inaugural committees should be subject to recordkeeping requirements, and, if so, whether they should be required to comply with the Commission's established recordkeeping regulations for political committees, *see* 11 CFR 104.14(b), or a different set of rules specifically created for inaugural committees. No commenters addressed this topic. The Commission concludes that an inaugural committee must maintain records that relate to any reportable donations in accordance with 11 CFR 104.14.

II. 11 CFR 110.20 Prohibition on Contributions, Donations, Expenditures, Independent Expenditures, and Disbursements by Foreign Nationals

1. 11 CFR 110.20(j)—Donations by Foreign Nationals to Inaugural Committees

BCRA section 308 prohibits an inaugural committee from accepting foreign national donations. 36 U.S.C. 510(c). Accordingly, the Commission is promulgating new paragraph (j) of 11 CFR 110.20 to implement this prohibition.

The NPRM proposed prohibiting the solicitation and receipt, in addition to the acceptance, of foreign national donations by inaugural committees. In order to more closely track the statute, which prohibits only acceptance of foreign national donations, the final rules do not prohibit inaugural committees from soliciting or receiving these donations. The Commission received no comments on the proposed prohibition of such activity; however, one commenter agreed generally with a ban on foreign national donations.

Additionally, although BCRA section 308 does not expressly include a ''knowingly'' standard for inaugural committees' acceptance of donations from foreign nationals, the Commission has previously read a ''knowingly'' standard into other statutory provisions banning acceptance of foreign national contributions and donations by other persons. *See* 11 CFR 110.20(g); Final Rule and Explanation and Justification, ''Contribution Limits and Prohibitions,'' 67 FR 69928, 69940 (November 19, 2002). In promulgating those rules banning contributions from foreign nationals, the Commission determined that ''a knowledge requirement may produce a less harsh result'' based on the Commission's prior enforcement experience with the frequent involvement of volunteers in the solicitation and receipt of contributions and donations. *Id.* at 69941. Therefore, to provide inaugural committees with the same protection, the new paragraph (j) prohibits only *knowing* acceptance of a donation from a foreign national. ''Knowingly'' is defined in 11 CFR 110.20(a).

Although BCRA section 308 does not explicitly forbid foreign nationals from making donations to an inaugural committee, the Commission also sought comment on whether a prohibition on the direct or indirect making of donations by foreign nationals is a permissible interpretation of BCRA section 308, as a necessary implication of the prohibition on the acceptance of such donations by inaugural committees. The Commission received no comments.

Consistent with the structure of current section 110.20, which implements BCRA's other prohibitions on foreign national money and other things of value, the Commission has determined that in order to effectuate BCRA's ban on acceptance of donations from foreign nationals, it is also necessary to impose a ban on the direct or indirect making of donations by foreign nationals to an inaugural committee. Therefore, the final rule at 11 CFR 110.20(j) prohibits both the acceptance of a donation from a foreign national by an inaugural committee, as well as the making of such a donation by a foreign national.

III. Enforcement Authority

BCRA established the Commission's responsibility to ''promulgate regulations to carry out [BCRA] and the amendments made by [BCRA].'' BCRA section 402(c). In the NPRM, the Commission sought comment on whether it specifically has authority to enforce new rules pertaining to inaugural committees, including the authority to audit inaugural committees, or whether the Commission's authority is limited to receiving the reports required by BCRA section 308 and making them available to the public. One commenter questioned the Commission's enforcement authority.

Although BCRA does not explicitly charge the Commission, or any other agency or entity, with enforcement of the amendment made to 36 U.S.C. chapter 5, the Commission has the responsibility to promulgate rules to implement the amendment and, as part of this authority, may fill in gaps left by Congress. *See Railway Labor Executives' Ass'n* v. *Nat'l Mediation Bd.*, 29 F.3d 655, 669 (D.C. Cir. 1994) (''Agencies owe their capacity to act to the delegation of authority, either express or implied, from the legislature.''); see *also Chevron* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984) (''The power of an administrative agency to administer a congressionally created * * * program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress.''). Therefore, the Commission concludes that it has implied enforcement authority because the authority to promulgate Commission rules necessarily implies the authority to enforce those rules. Enforcement authority with regard to foreign national donations to inaugural committees, and reporting by inaugural committees is fully consistent with the Commission's enforcement authority as to other foreign national donations and reporting by political committees.

The Commission notes that the Mayor of the District of Columbia is charged with general enforcement of chapter 5 of title 36 of the United Stated Code, and must ''take necessary precautions to protect the public, and ensure that the pavement of any street, sidewalk, avenue, or alley disturbed or damaged is restored to its prior condition.'' 36 U.S.C. 508. The District of Columbia's enforcement powers under chapter 5, however, are limited to authority over the infrastructure necessary for the inaugural events and the public safety during the events. In addition, the District of Columbia's rules to

implement this chapter ''are effective only during the inaugural period,'' 36 U.S.C. 506, which begins five calendar days before the inauguration and ends four calendar days after the inauguration, 36 U.S.C. 501(2). Therefore, the scope of the District of Columbia's authority with respect to the inauguration does not extend beyond four days after the inauguration and would not cover the 90 day period after the inauguration within which an inaugural committee must file its report with the Commission.

The District of Columbia's Inaugural Committee (the ''DCIC''), a committee made up of representatives from the District's permit granting agencies, is charged with regulating the activities of the Presidential inauguration and the activities of the inaugural committee pertaining to public safety for the Presidential inauguration. The Commission has confirmed, through communications with the chairperson of the DCIC, that the DCIC is aware of the new requirements of these final rules, including the letter-filing requirement under new 11 CFR 104.21(b) that is a precondition to the inaugural committee receiving any necessary permits from the DCIC. Moreover, the chairperson of the DCIC has indicated that the DCIC considers the enforcement of provisions of 36 U.S.C. 510 not pertaining to public safety and inaugural committee events in the District of Columbia to be the Commission's responsibility.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached rules will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that these rules affect only inaugural committees appointed by the President-elect, of which there will be only one every four years. An inaugural committee does not appear to be a small entity within the meaning of 5 U.S.C. 601(3)–(6). Even if an inaugural committee is deemed a small entity, the new reporting rules require the filing of only one letter and one report, with supplements thereto as necessary. There is no ongoing reporting requirement after all donations have been reported. Therefore, any increase in the cost of compliance would not impose a significant economic burden on a substantial number of small entities.

List of Subjects

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

■ For the reasons set forth in the preamble, the Federal Election Commission amends Subchapter A of Chapter I of Title 11 of the *Code of Federal Regulations* as follows:

PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (2 U.S.C. 434)

■ 1. The title of Part 104 is revised to read as set forth above.

■ 2. The authority citation for part 104 is revised to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), 439a, 441a, and 36 U.S.C. 510.

■ 3. A new § 104.21 is added to read as follows:

§ 104.21 Reporting by inaugural committees.

(a) *Definitions*—(1) *Inaugural committee.* Inaugural committee means the committee appointed by the President-elect to be in charge of the Presidential inaugural ceremony and functions and activities connected with the inaugural ceremony.

(2) *Donation.* For purposes of this section, donation has the same meaning as in 11 CFR 300.2(e).

(b) *Initial letter-filing by inaugural committees.* (1) In order to be considered the inaugural committee under 36 U.S.C. Chapter 5, within 15 days of appointment by the President-elect, the appointed committee must file a signed letter with the Commission containing the following:

(i) The name and address of the inaugural committee;

(ii) The name of the chairperson, or the name and title of another officer who will serve as the point of contact; and

(iii) A statement agreeing to comply with paragraphs (c) and (d) of this section and with 11 CFR 110.20(j).

(2) Upon receipt of the letter filed under this paragraph (b), the Commission will assign a FEC committee identification number to the inaugural committee. The inaugural committee must include this FEC committee identification number on all reports and supplements thereto required under paragraph (c) of this section, as well as on all communications with the Commission concerning the letter filed under this paragraph (b).

(c) *Reporting requirements for inaugural committees*—(1) *Who must report.* The chairperson or other officer identified in the letter-filing required by paragraph (b) of this section must file a report and any supplements thereto as required by this paragraph (c). Such person must sign the report and any supplements thereto in accordance with 11 CFR 104.14(a). The signature on the report and any supplements thereto certifies that the contents are true, correct, and complete, to the best of knowledge of the chairperson or other officer identified in the letter-filing required by paragraph (b) of this section.

(2) *When to file.* A report, and any supplements thereto, must be timely filed in accordance with 11 CFR 100.19 as follows:

(i) *Report.* An inaugural committee must file a report with the Commission no later than the 90th day following the date on which the Presidential inaugural ceremony is held.

(ii) *Supplements to the report.* (A) An inaugural committee must file a supplement to its report if it accepts a reportable donation, or makes a refund during the 90 days following the end of the covering period of its original report or its most recent supplement.

(B) Any supplement must be filed no later than the 90th day following the filing date of an original report, or if a supplement has already been filed, the filing date of the most recent supplement.

(3) *Where to file.* All letters, reports, and any supplements thereto, as required under this section, shall be filed with the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(4) *How to file.* An inaugural committee must file its letter, report, and any supplements thereto, in original form; however, an inaugural committee may choose to file its reports in an electronic format that meets the requirements of 11 CFR 104.18.

(5) *Form.* An inaugural committee must file the report required by this paragraph on FEC Form 13.

(6) *Content of report.* Each report, and any supplements thereto, filed with the Commission under this section must contain the following:

(i) Covering period beginning and ending dates, as follows:

(A) The covering period of a report means the period of time beginning on the date of the inaugural committee's appointment by the President-elect and ending no earlier than 15 days before the day on which the inaugural

committee files its report with the Commission.

(B) The covering period of a supplement to the report means the period of time beginning on the day after the ending date of the covering period of the original report, or the most recent supplement thereto, and ending no earlier than 15 days before the day on which the inaugural committee files such supplement with the Commission.

(ii) Cumulative totals from the date of the inaugural committee's appointment by the President-elect for all:

(A) Donations reported under paragraph (c)(6)(iii) of this section;

(B) Refunds reported under paragraph (c)(6)(iv) of this section; and

(C) Net reported donations;

(iii) Itemization of previously unreported donations of $200 or more, and donations that aggregate $200 or more, including:

(A) The full name of each person who made such a donation, including first name, middle name or initial, if available, and last name, in the case of an individual;

(B) The address of each such person;

(C) The amount of each such donation; and

(D) The date of receipt of each such donation; and

(iv) Itemization of previously unreported refunds of previously, or contemporaneously, reported donations, including:

(A) The full name of each person to whom such a refund was made, including first name, middle name or initial, if available, and last name, in the case of an individual;

(B) The address of each such person;

(C) The amount of each such refund; and

(D) The date of each such refund.

(d) *Recordkeeping.* All inaugural committees must maintain records in accordance with 11 CFR 104.14.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

■ 4. The authority citation for Part 110 is revised to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 441k, and 36 U.S.C. 510.

■ 5. The subject heading of § 110.20 is revised and paragraph (j) is added to read as follows:

§ 110.20 Prohibition on contributions, donations, expenditures, independent expenditures, and disbursements by foreign nationals (2 U.S.C. 441e, 36 U.S.C. 510).

* * * * *

(j) *Donations by foreign nationals to inaugural committees.* A foreign national shall not, directly or indirectly, make a donation to an inaugural committee, as defined in 11 CFR 104.21(a)(1). No person shall knowingly accept from a foreign national any donation to an inaugural committee.

Dated: September 30, 2004.

Bradley A. Smith,

Chairman, Federal Election Commission.

[FR Doc. 04–22393 Filed 10–5–04; 8:45 a.m.]

BILLING CODE 6715–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 335

RIN 3064–AC79

Securities of Nonmember Insured Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting a final rule, unchanged from an interim final rule published on April 12, 2004 in the **Federal Register** (*see* 69 FR 19085), which confirms amendments to its securities disclosure regulations applicable to banks with securities registered under section 12 of the Securities Exchange Act of 1934 (Exchange Act). These amendments implemented the requirements of the Exchange Act, as amended by the Sarbanes-Oxley Act of 2002, which mandates electronic filing of reports related to beneficial ownership of securities by the directors, executive officers, and principal shareholders of public companies. Prior to issuance of the interim final rule, the FDIC's securities disclosure regulations prohibited electronically transmitted filings or submissions of materials in electronic format to the FDIC. The amended rules provide an exception to this prohibition, requiring electronically transmitted filings of beneficial ownership reports by bank directors, officers, and principal shareholders to disclose securities transactions and ownership. Related technical or procedural provisions were also amended as appropriate.

DATES: These amendments are effective on October 6, 2004.

FOR FURTHER INFORMATION CONTACT: Dennis Chapman, Senior Staff Accountant, Division of Supervision and Consumer Protection, (202) 898–8922; Mary Frank, Senior Financial Analyst, Division of Supervision and Consumer Protection, (202) 898–8903; or Carl J. Gold, Counsel, Legal Division, (202) 898–8702, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background and Authority for This Final Rule

a. Appropriate Federal Banking Agency Authority Under the Exchange Act

Section 12(i) of the Securities Exchange Act of 1934 as amended (15 U.S.C. 78l(i)) authorizes the Federal banking agencies (the FDIC, the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS)) to enforce sections 10A(m) (standards relating to audit committees), 12 (securities registration), 13 (periodic reporting), 14(a) (proxies and proxy solicitation), 14(c) (information statements), 14(d) (tender offers), 14(f) (arrangements for changes in directors), and 16 (beneficial ownership and reporting) of the Exchange Act, and sections 302 (corporate responsibility for financial reports), 303 (improper influence on conduct of audits), 304 (forfeiture of certain bonuses and profits), 306 (insider trades during pension blackout periods), 401(b) (disclosure of pro forma financial information), 404 (management assessment of internal controls), 406 (code of ethics for senior financial officers), and 407 (disclosure of audit committee financial expert) of the Sarbanes-Oxley Act of 2002, in regard to the depository institutions for which each Federal banking agency is, respectively, the primary federal supervisor. The Exchange Act seeks to protect investors by requiring accurate, reliable, and timely corporate securities disclosures.

The FDIC is authorized, in administering the above-listed statutory provisions, to promulgate regulations applicable to the securities of insured banks (including foreign banks having an insured branch) which are neither members of the Federal Reserve System nor District banks (collectively referred to as ''state nonmember banks''). These regulations must be substantially similar to the regulations of the Securities and Exchange Commission (SEC) under the listed sections of the Exchange Act and the Sarbanes-Oxley Act, unless the FDIC publishes its reasons for deviating from the SEC's rules.

b. Section 16 of the Exchange Act

Section 16 of the Exchange Act applies to every person who is the

beneficial owner of more than 10 percent of a class of equity securities registered under section 12 of the Exchange Act and to each officer and director of the issuer of the security (collectively, ''reporting persons,'' ''insiders,'' or ''filers''). Upon becoming a reporting person, or upon the section 12 registration of that class of securities, section 16(a) requires a reporting person to file an initial report with the SEC (or in the case of an insured depository institution, its appropriate Federal banking agency) disclosing the amount of his or her beneficial ownership of all equity securities of the issuer. To keep this information current, section 16(a) also requires reporting persons to report changes in their beneficial ownership. Prior to the Sarbanes-Oxley Act, insiders of state nonmember banks with a class of equity securities registered under section 12 of the Exchange Act filed these beneficial ownership reports on paper. In the case of insiders connected to state nonmember banks, reports were filed using FDIC Forms F–7, F–8, and F–8A.

c. Sarbanes-Oxley Act Amendments to Section 16

As amended by section 403 of the Sarbanes-Oxley Act of 2002, Public Law 107–204 (July 30, 2002), section 16(a) of the Exchange Act (15 U.S.C. 78p(a)) requires electronic submission of certain beneficial ownership reports submitted on or after July 30, 2003. The SEC or, respectively, the appropriate Federal banking agency, is required to make those filings available to the public on the Internet. Institutions with Web sites are required to post their insiders' change in beneficial ownership reports on their Internet Web sites. In addition, section 16, as amended by Sarbanes-Oxley, requires filing of beneficial ownership reports before the end of the second business day following the day on which the subject transaction was executed (effective for transactions on or after August 29, 2002).

II. Development and Initiation of Electronic Filing System for Beneficial Ownership Reports

On August 27, 2002, the SEC adopted rule amendments to implement the accelerated filing deadline for beneficial ownership reports [see SEC Release No. 34–46421 (Sept. 3, 2002) [67 FR 56462]]. These amendments have, since their adoption, been applicable to insiders of state nonmember banks in accordance with section 335.601 of the FDIC rules. Previously, beneficial ownership reports filed by insiders of state nonmember banks were filed with the FDIC within 10 days from the end of the month of the transaction. On May 7, 2003, the SEC issued a final rule implementing the electronic submission requirements for beneficial ownership reports as required by section 16 of the Exchange Act as amended [SEC Release No. 34–47809 (May 13, 2003) [68 FR 25788]]. On July 30, 2003, the FDIC, FRB, and OCC established an interagency electronic filing system for these beneficial ownership reports, hosted on the FDIC's web site. See FIL–60–2003, Federal Banking Agencies Announce New Interagency Electronic Filing System for Beneficial Ownership Reports (July 28, 2003) [*http://www.fdic.gov/news/news/financial/2003/fil0360.html*]. The OTS joined this filing system on October 27, 2003. See OTS 03–36, Office of Thrift Supervision Joins the FDIC's Interagency Electronic Filing System for Beneficial Ownership Reports (October 30, 2003) [*http://www.ots.treas.gov/docs/7/77336.html*]. The filing of beneficial ownership reports using the electronic interagency filing system was authorized for insiders of state nonmember banks beginning July 30, 2003, to provide an initial period to test the efficacy of the system.

III. Interim Final Rule and Request for Comments

On April 12, 2004, the FDIC published in the **Federal Register** (69 FR 19085) an interim final rule which, consistent with Sarbanes-Oxley, provided an exception to a prohibition in part 335 of the FDIC's rules on electronic filing of required reports. Effective June 11, 2004, the rule required the electronic transmission of beneficial ownership reports by bank directors, officers, and principal shareholders to disclose securities transactions and ownership. The interim final rule also made certain technical or procedural amendments to part 335. The FDIC invited comment on the interim final rule, with comments due by June 11, 2004. The FDIC specifically invited comment on whether the FDIC's rules should include a provision like one in the SEC's rules for its EDGAR system that protects an electronic filer from the liability and anti-fraud provisions of the federal securities laws with respect to an error or omission in an electronic filing resulting solely from electronic transmission errors beyond the control of the filer, where the filer corrects the error or omission by the filing of an amendment in electronic format as soon as reasonably practicable after the electronic filer becomes aware of the error or omission.

One comment was filed on the interim final rule. The commenter, a trade association for insured depository institutions, stated that persons filing beneficial ownership reports electronically with the FDIC should be protected from liability to the same extent as filers with the SEC. However, the commenter believed it is unclear whether the FDIC's authority under Section 12(i) of the Exchange Act is sufficient to incorporate the protection provided by the SEC. Therefore, the commenter argued, the FDIC should include in its regulations specific language to this effect.

IV. Final Rule

a. Effect of Sarbanes-Oxley Act

The FDIC's securities disclosure regulations, which contain registration and reporting requirements applicable to state nonmember banks with securities registered under section 12 of the Exchange Act (registered banks), are contained in 12 CFR part 335. Before the effective date of section 403 of the Sarbanes-Oxley Act, part 335 of the FDIC rules prohibited any electronically transmitted filings or submissions of materials in electronic format to the FDIC. In regard to the filing of beneficial ownership reports, that prohibition was superseded by section 403 of the Sarbanes-Oxley Act of 2002, which amended section 16 of the Exchange Act.

b. Electronic Filing Requirements

As amended, 12 CFR part 335 makes clear that, except in limited circumstances described below, beneficial ownership reports by state nonmember bank insiders are to be filed electronically with the FDIC, consistent with timeframes provided in section 16 of the Exchange Act and SEC regulations. Mandated electronic filing benefits members of the investing public and the financial community by making information contained in the filings available to them immediately after receipt by the FDIC. Electronically filed information concerning insiders' transactions in registered bank equity securities will be publicly accessible substantially sooner and more readily than before. The electronic format of the filed information facilitates research and data analysis by investors and the public. The accelerated filing requirements of section 16(a) of the Exchange Act that took effect on August 29, 2002, also make electronic filing of beneficial ownership reports more useful to the public. Finally, the FDIC believes that investors want electronic access to these forms, that reports of insiders' transactions in equity securities of registered banks provide

useful information as to management's views of the bank's performance or prospects, and that more timely and transparent access to reports will be useful to investors.

As required by section 12(i) of the Exchange Act, the amended 12 CFR part 335 is substantially similar to the Exchange Act regulations of the SEC.[1] Should a reason for deviating from SEC regulations become apparent in the future, the FDIC will consider amending its rules. The FDIC has adopted other technical provisions which address the forms on which beneficial ownership reports are filed. Also, to improve consistency with SEC requirements, the FDIC has revised the names of its existing beneficial ownership report Forms F–7, F–8 and F–8A. These Forms have been renamed as FDIC Forms 3, 4 and 5, respectively.

c. Hardship Exemption

As discussed, 12 CFR part 335 as amended requires all beneficial ownership reports to be electronically submitted on the FDIC's interagency Beneficial Ownership Filings system. If all or part of a filing cannot be made electronically without undue burden or expense, a reporting person may apply for a continuing hardship exemption under the new section 12 CFR 335.801(b)(6).

A filer may apply in writing for a continuing hardship exemption if all or part of a filing or group of filings otherwise to be filed in electronic format cannot be so filed without undue burden or expense. Such written application must be made at least ten business days prior to the required due date of the filing(s) or the proposed filing date, as appropriate, or within such shorter period as may be permitted by the FDIC. The written application for the exemption must include the following information:

(1) The reason(s) that the necessary hardware and software are not available without unreasonable burden and expense;

(2) The burden and expense involved to employ alternative means to make the electronic submission; and/or

(3) The reasons for not submitting electronically the document or group of documents, as well as justification for the requested time period for the exemption.

If the FDIC determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of investors, it will so notify the applicant. Upon such notification the filer must submit the document for which the exemption is granted in paper format on the required due date specified in the applicable form, rule, or regulation, or the proposed filing date, as appropriate. Additional provisions applicable to the continuing hardship exemption and detailed procedures for seeking the exemption are set forth in the text of the amended regulation.

d. Filing Date Adjustment

Instead of pursuing a hardship exemption, an electronic filer may request a filing date adjustment under this rule where the filer attempts in good faith to file a document with the FDIC in a timely manner but the filing is delayed due to technical difficulties beyond the filer's control. In those instances, the filer may request an adjustment of the document's filing date. The FDIC may grant the request if it appears that the adjustment is appropriate and consistent with the public interest and the protection of investors.

e. Potential Liability in Case of Transmission Errors

The SEC's rules governing electronic filings provide that an electronic filer ''shall not be subject to the liability and anti-fraud provisions of the federal securities laws with respect to an error or omission in an electronic filing resulting solely from electronic transmission errors beyond the control of the filer, where the filer corrects the error or omission by the filing of an amendment in electronic format as soon as reasonably practicable after the electronic filer becomes aware of the error or omission.'' 17 CFR 232.103. Although FDIC received a comment that it should include specific language to this effect in Part 335, after further consideration the FDIC does not believe such language is necessary. As stated in the preamble to the interim final rule, the FDIC believes that the SEC's regulation presents a reasonable approach to transmission errors and that it applies to electronic filings made with the FDIC as well. See 12 CFR 335.101(b). In circumstances where there has been a filing error or omission due solely to an electronic transmission error beyond the filer's control, the FDIC will not cite a violation of part 335 if the error or omission is corrected as soon as reasonably practicable.

V. Regulatory Analysis and Procedure

a. Administrative Procedure Act (APA)

As noted in publishing the interim final rule, under the Administrative Procedure Act, 5 U.S.C. 553(b), the FDIC found good cause to issue the interim final rule without first seeking public comment. Section 553(b) of the APA does not apply to rules of agency organization, procedure, or practice, or when the agency for good cause finds that notice and public comment on the rules being promulgated are impracticable or unnecessary. As discussed in the preamble to the interim final rule, the FDIC confirms its finding that this is a procedural rule, and that, in addition, there is good cause to issue the rule before providing an opportunity for public comment. Also, as discussed above and in the preamble to the interim final rule, the Sarbanes-Oxley Act mandates that certain beneficial ownership reports be filed electronically. Therefore, the current outright prohibition in 12 CFR part 335 on electronic filing is obsolete. Also, as noted, the SEC has made electronic filing mandatory and the Exchange Act requires that the FDIC issue regulations substantially similar to those of the SEC or publish its reasons for not doing so. Therefore, prior public comment on whether to continue to prohibit the electronic filing of these reports was impracticable and unnecessary. Nonetheless, the FDIC solicited public comment and has considered the comment that was filed.

Further, as authorized by section 553(d) of the APA, the FDIC finds that there is good cause for this final rule to take effect immediately upon publication in the **Federal Register**. The interim final rule became effective on June 11, 2004, and insured state nonmember banks have had approximately one year since the establishment of the FDIC's electronic filing system to gain experience in filing these reports electronically. No purpose would be served by delaying the rule's effective date.

b. Paperwork Reduction Act

Reports of beneficial ownership are considered to be a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) The FDIC has previously obtained Office of Management and Budget (OMB) approval of this collection of information under control number 3064–0030. OMB has reviewed and approved the collection as revised to take into account electronic filing. It is estimated that there will be 1,800

[1] The FDIC's rules, at 12 CFR 335.101(b), provide that part 335 generally incorporates the SEC's rules issued under Section 12, 13, 14, and 16 of the Exchange Act.

responses annually, cumulatively resulting in 1,100 burden hours.

c. Regulatory Flexibility Act

A regulatory flexibility analysis is required only when the agency must publish a notice of proposed rulemaking (5 U.S.C. 603, 604). As already noted, the FDIC has determined that a notice of proposed rulemaking is not required. Accordingly, no regulatory flexibility analysis is required.

d. Small Business Regulatory Flexibility Enforcement Fairness Act

Section 804 of the Small Business Regulatory Flexibility Enforcement Fairness Act (''SBREFA''), 5 U.S.C. 801 *et al.*, defines ''rule'' to exclude any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties. The amendments to part 335 are technical and ministerial applications of the statute and affect only procedural matters. Therefore, the rule is not covered by covered by SBREFA and is not being reported to Congress.

List of Subjects in 12 CFR Part 335

Accounting, Banks, Banking, Confidential business information, Reporting and recordkeeping requirements, Securities.

■ For the reasons set forth in the preamble, part 335 of chapter III of title 12 of the Code of Federal Regulations is amended to read as follows:

PART 335—SECURITIES OF NONMEMBER INSURED BANKS

■ 1. The authority citation for part 335 continues to read as follows:

Authority: 15 U.S.C. 78l(i).

■ 2. Section 335.101 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 335.101 Scope of part, authority and OMB control number.

(a) * * * The FDIC is vested with the powers, functions, and duties vested in the Securities and Exchange Commission (the Commission or SEC) to administer and enforce the provisions of sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Securities Exchange Act of 1934, as amended (the Exchange Act) (15 U.S.C. 78l, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78(p)), and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265) regarding nonmember banks with one or more classes of securities subject to the registration provisions of sections 12(b) and 12(g) of the Exchange Act.

* * * * *

■ 3. Section 335.111 is amended by revising the sixth sentence to read as follows:

§ 335.111 Forms and schedules.

* * * Forms 3 (§ 335.611), 4 (§ 335.612), and 5 (§ 335.613) are FDIC forms which are issued under section 16 of the Exchange Act and can be obtained from the Accounting and Securities Disclosure Section, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. * * *

■ 4. Section 335.601 is amended to read as follows:

§ 335.601 Requirements of section 16 of the Securities Exchange Act of 1934.

Persons subject to section 16 of the Act with respect to securities registered under this part shall follow the applicable and currently effective SEC regulations issued under section 16 of the Act (17 CFR 240.16a–1 through 240.16e–1(1), except that the forms described in § 335.611 (FDIC Form 3), § 335.612 (FDIC Form 4), and § 335.613 (FDIC Form 5) shall be used in lieu of SEC Form 3 (17 CFR 249.103), Form 4 (17 CFR 249.104), and Form 5 (17 CFR 249.105), respectively. Copies of FDIC Forms 3, 4, 5 and the instructions thereto can be obtained from the Accounting and Securities Disclosure Section, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

■ 5. Section 335.611 is amended by revising the title to read as follows:

§ 335.611 Initial statement of beneficial ownership of securities (Form 3).

* * * * *

■ 6. Section 335.612 is amended by revising the title to read as follows:

§ 335.612 Statement of changes in beneficial ownership of securities (Form 4).

* * * * *

■ 7. Section 335.613 is amended by revising the title to read as follows:

§ 335.613 Annual statement of beneficial ownership of securities (Form 5).

* * * * *

■ 8. Section 335.701 is amended by revising paragraph (a) and (b) to read as follows:

§ 335.701 Filing requirements, public reference, and confidentiality.

(a) *Filing requirements.* Unless otherwise indicated in this part, one original and four conformed copies of all papers required to be filed with the FDIC under the Exchange Act or regulations thereunder shall be filed at its office in Washington, DC Official filings made at the FDIC's office in Washington, DC should be addressed as follows: Attention: Accounting and Securities Disclosure Section, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Material may be filed by delivery to the FDIC through the mails or otherwise. The date on which papers are actually received by the designated FDIC office shall be the date of filing thereof if all of the requirements with respect to the filing have been complied with.

(b) *Inspection.* Except as provided in paragraph (c) of this section, all information filed regarding a security registered with the FDIC will be available for inspection at the Federal Deposit Insurance Corporation, Accounting and Securities Disclosure Section, Division of Supervision and Consumer Protection, 550 17th Street, NW., Washington, DC. Beneficial ownership report forms that are electronically submitted to the FDIC through the interagency Beneficial Ownership Filings system will be made available on the FDIC's web site (*http://www.fdic.gov*).

* * * * *

■ 9. Section 335.801 is amended by revising paragraph (b) to read as follows:

§ 335.801 Inapplicable SEC regulations; FDIC substituted regulations; additional information.

* * * * *

(b) *Electronic filings.* (1) The FDIC does not participate in the SEC's EDGAR (Electronic Data Gathering Analysis and Retrieval) electronic filing program (17 CFR part 232). The FDIC does not permit electronically transmitted filings or submissions of materials in electronic format to the FDIC, with the exception of beneficial ownership report filings on FDIC Forms 3, 4 and 5.

(2) All reporting persons must file beneficial ownership report Forms 3, 4 and 5, including amendments and exhibits thereto, in electronic format using the Internet based, interagency Beneficial Ownership Filings system, which is accessible through the FDIC*connect* Business Center, except that a reporting person that has obtained a continuing hardship exemption under these rules may file the forms with the FDIC in paper format. For information and answers to questions regarding beneficial ownership and the

completion and filing of the forms, please contact the FDIC Accounting and Securities Disclosure Section in Washington DC For information and answers to technical questions or problems relating to the use of FDIC*connect,* contact the FDIC*connect* Project Team toll-free at 877–275–3342 or by mail at 3501 North Fairfax Drive, Arlington, VA 22226.

(3) Electronic filings of FDIC beneficial ownership report Forms 3, 4, and 5 must be submitted to the FDIC through the interagency Beneficial Ownership Filings system. Beneficial ownership reports and any amendments are deemed filed with the FDIC upon electronic receipt on business days from 8 a.m. through 10 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect (Eastern Time). Business days include each day, except Saturdays, Sundays and Federal holidays. All filings submitted electronically to the FDIC commencing after 10 p.m. Eastern Time on business days shall be deemed filed as of 8 a.m. on the following business day. All filings submitted electronically to the FDIC on non-business days shall be deemed filed as of 8 a.m. on the following business day.

(4) *Adjustment of the filing date.* If an electronic filer in good faith attempts to file a beneficial ownership report with the FDIC in a timely manner but the filing is delayed due to technical difficulties beyond the electronic filer's control, the electronic filer may request an adjustment of the filing date of such submission. The FDIC may grant the request if it appears that such adjustment is appropriate and consistent with the public interest and the protection of investors.

(5) *Exhibits.* (i) Exhibits to an electronic filing that have not previously been filed with the FDIC shall be filed in electronic format, absent a hardship exemption.

(ii) Previously filed exhibits, whether in paper or electronic format, may be incorporated by reference into an electronic filing to the extent permitted by applicable SEC rules under the Exchange Act. An electronic filer may, at its option, restate in electronic format an exhibit incorporated by reference that originally was filed in paper format.

(iii) Any document filed in paper format in violation of mandated electronic filing requirements shall not be incorporated by reference into an electronic filing.

(6) *Continuing Hardship Exemption.* The FDIC will not accept in paper format any beneficial ownership report filing required to be submitted electronically under this part unless the filer satisfies the requirements for a continuing hardship exemption:

(i) A filer may apply in writing for a continuing hardship exemption if all or part of a filing or group of filings otherwise to be filed in electronic format cannot be so filed without undue burden or expense. Such written application shall be made at least ten business days prior to the required due date of the filing(s) or the proposed filing date, as appropriate, or within such shorter period as may be permitted. The written application shall be sent to the Accounting and Securities Disclosure Section, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429, and shall contain the information set forth in paragraph (b)(6)(ii) of this section.

(A) The application shall not be deemed granted until the applicant is notified by the FDIC.

(B) If the FDIC denies the application for a continuing hardship exemption, the filer shall file the required document in electronic format on the required due date or the proposed filing date or such other date as may be permitted.

(C) If the FDIC determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of investors and so notifies the applicant, the filer shall follow the procedures set forth in paragraph (b)(6)(iii) of this section.

(ii) The request for the continuing hardship exemption shall include, but not be limited to, the following:

(A) The reason(s) that the necessary hardware and software are not available without unreasonable burden and expense;

(B) The burden and expense involved to employ alternative means to make the electronic submission; and/or

(C) The reasons for not submitting electronically the document or group of documents, as well as justification for the requested time period for the exemption.

(iii) If the request for a continuing hardship exemption is granted, the electronic filer shall submit the document or group of documents for which the exemption is granted in paper format on the required due date specified in the applicable form, rule or regulation, or the proposed filing date, as appropriate. The paper format document(s) shall have placed at the top of page 1, or at the top of an attached cover page, a legend in capital letters:

IN ACCORDANCE WITH 12 CFR 335.801(b), THIS (SPECIFY DOCUMENT) IS BEING FILED IN PAPER PURSUANT TO A CONTINUING HARDSHIP EXEMPTION.

(iv) Where a continuing hardship exemption is granted with respect to an exhibit only, the paper format exhibit shall be filed with the FDIC under cover of SEC Form SE (17 CFR 249.444). Form SE shall be filed as a paper cover sheet to all exhibits to beneficial ownership reports submitted to the FDIC in paper form pursuant to a hardship exemption.

(v) Form SE shall be submitted along with all exhibits filed in paper form pursuant to a hardship exemption. Form SE may be filed up to six business days prior to, or on the date of filing of, the electronic form to which it relates but shall not be filed after such filing date. If a paper exhibit is submitted in this manner, requirements that the exhibit be filed with, provided with, or accompany the electronic filing shall be satisfied. Any requirements as to delivery or furnishing the information to persons other than the FDIC shall not be affected by this section.

(7) *Signatures.* (i) Required signatures to, or within, any electronic submission must be in typed form. When used in connection with an electronic filing, the term ''signature'' means an electronic entry or other form of computer data compilation of any letters or series of letters or characters comprising a name, executed, adopted or authorized as a signature.

(ii) Each signatory to an electronic filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing. Such document shall be executed before or at the time the electronic filing is made and shall be retained by the filer for a period of five years. Upon request, an electronic filer shall furnish to the FDIC a copy of any or all documents retained pursuant to this section.

(iii) Where the FDIC's rules require a filer to furnish to a national securities exchange, a national securities association, or a bank, paper copies of a document filed with the FDIC in electronic format, signatures to such paper copies may be in typed form.

* * * * *

Note— The following forms will not appear in the Code of Federal Regulations.

■ 10. Amend Form F–7 (referenced in § 335.111 and § 335.611) by:

■ a. Revising General Instruction 2(a);

■ b. Revising General Instruction 3(a);

■ c. Adding a note following General Instruction 3;

■ d. Revising General Instruction 5(b)(v);

■ e. Revising General Instruction 6;
■ f. Adding a new General Instruction 8;
■ g. Revising the short title of the Initial Statement of Beneficial Ownership of Securities from Form F–7 to Form 3 in the form heading;
■ h. Removing Item 3 and redesignating Items 4, 5, 6 and 7 to the information preceding Table I as Items 3, 4, 5 and 6 to the information preceding Table I; and
■ i. Revising newly redesignated Item 5 to the information preceding Table I.

The revisions and additions read as follows:

Form 3 Initial Statement of Beneficial Ownership of Securities

* * * * *

GENERAL INSTRUCTIONS

* * * * *

2. When Form Must Be Filed

(a) This form must be filed within 10 days after the event by which the person becomes a reporting person (*i.e.*, officer, director, 10 percent holder or other person). This form and any amendment is deemed filed with the appropriate Federal Banking Agency upon electronic receipt on business days during the hours of 8 a.m. until 10 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect. A form received after these business hours will be deemed filed at 8 a.m. on the following business day. If this form is submitted through FDICconnect on a non-business day, it will be deemed filed at 8 a.m. on the following business day. Business days include all weekdays that are not Federal holidays. A paper form submitted by a reporting person that has obtained a hardship exemption under FDIC rules will be deemed filed with the FDIC on the date it is received by the FDIC. If this form is required to be filed on an exchange, this form and any amendment is deemed filed with the exchange on the date it is received by the exchange.

* * * * *

3. Where Form Must Be Filed

(a) A reporting person must file Form 3 in electronic format using the secure, Internet-based, FDICconnect Business Center to access the interagency Beneficial Ownership Filings system, except that a filing person that has obtained a hardship exemption under applicable FDIC rules (see 12 CFR 335.801(b)) may file the form in paper form. For information and answers to questions regarding beneficial ownership and the completion and filing of the forms please contact the FDIC Division of Supervision and Consumer Protection, Accounting and Securities Disclosure Section, 550 17th Street NW., Washington, DC 20429. For technical questions or problems relating to the use of FDICconnect or Designated Coordinator registration, contact FDICconnect toll-free at 877–275–3342 or via e-mail at *FDICconnect@fdic.gov.*

* * * * *

Note: If filing pursuant to a hardship exemption under FDIC rules, file three copies of this form or any amendment, at least one of which is signed, with the FDIC in accordance with applicable rules. (Acknowledgement of receipt by the agency may be obtained by enclosing a self-addressed stamped postcard or envelope identifying the form or amendment filed.)

* * * * *

5. Holdings Required To Be Reported

* * * * *

(b) Beneficial Ownership Reported (Pecuniary Interest)

* * * * *

(v) Where more than one person beneficially owns the same equity securities, such owners may file Form 3 individually or jointly. Joint and group filings may be made by any designated beneficial owner. Holdings of securities owned separately by any joint or group filer are permitted to be included in the joint filing. Indicate the name and address of the designated reporting person in Item 1 of Form 3 and attach a list of the names and addresses of each other reporting person. Joint and group filings must include all required information for each beneficial owner, and such filings must be signed by each beneficial owner, or on behalf of such owner by an authorized person. Use the Filer Information screen in the interagency Beneficial Ownership Filings system to submit additional joint or group filers' names and related filing information required by this form.

If this form is being filed in paper form pursuant to a hardship exemption and the space provided for signatures is insufficient, attach a signature page. If this form is being filed in paper form, submit any attached listing of names or signatures on another Form 3, copy of Form 3 or separate page of 8½ by 11 inch white paper, indicate the number of pages comprising the report (form plus attachments) at the bottom of each report page (*e.g.*, 1 of 3, 2 of 3, 3 of 3), and include the name of the designated filer and information required by Items 2 and 3 of the form on the attachment.

See SEC Rule 16a–3(i) regarding signatures.

* * * * *

6. Additional Information

(a) If space provided in the line items on this Form 3 is insufficient, identify and enter additional information and footnotes under Explanation of Responses.

(b) If the space provided in the line items on the paper Form 3 or space provided for additional comments is insufficient, attach another Form 3, copy of Form 3 or separate 8½ by 11 inch white paper to Form 3, completed as appropriate to include the additional comments. Each attached page must include information required in Items 1, 2 and 3 of the form. The number of pages comprising the report (form plus attachments) shall be indicated at the bottom of each report page (e.g., 1 of 3, 2 of 3, 3 of 3).

(c) If one or more exhibits are included with the form, provide a reference to such exhibit(s) under Explanation of Responses. If the exhibit is being filed in paper form pursuant to a hardship exemption under applicable FDIC rules, place the designation ''P'' (paper) next to the name of the exhibit in the exhibit reference.

(d) If additional information is not reported in this manner, it will be assumed that no additional information was provided.

* * * * *

8. Amendments

(a) If this form is filed as an amendment in order to add one or more lines of ownership information to Table I or Table II of the form being amended, provide each line being added, together with one or more footnotes, under Explanation of Responses as necessary to explain the addition of the line or lines. Do not repeat lines of ownership information that were disclosed in the original form and are not being amended.

(b) If this form is filed as an amendment in order to amend one or more lines of ownership information that already were disclosed in Table I or Table II of the form being amended, provide the complete line or lines being amended, as amended, together with notes under Explanation of Responses as necessary to explain the amendment of the line or lines. Do not repeat lines of ownership information that were disclosed in the original form and are not being amended.

(c) If this form is filed as an amendment for any other purpose other than or in addition to the purpose described in items (a) or (b) of this General Instruction 8, provide one or more notes under Explanation of

Responses, as necessary, to explain the amendment.

* * * * *

Form 3 Initial Statement of Beneficial Ownership of Securities

* * * * *

5. If Amendment, Date Original Filed (Month/Day/Year)

* * * * *

■ 11. Amend Form F–8 (referenced in § 335.111 and § 335.612) by:
■ a. Revising General Instruction 1(a);
■ b. Revising General Instruction 2(a);
■ c. Adding a note following General Instruction 2;
■ d. Revising General Instruction 4(b)(v);
■ e. Revising General Instruction 6;
■ f. Adding a new General Instruction 9;
■ g. Revising the short title of the Statement of Changes in Beneficial Ownership of Securities from Form F–8 to Form 4 in the form heading;
■ h. Removing Item 3 and redesignating Items 4, 5, 6 and 7 to the information preceding Table I as Items 3, 4, 5 and 6 to the information preceding Table I; and
■ i. Revising newly redesignated Items 3 and 4 to the information preceding Table I.

The revisions and additions read as follows:

Form 4 Statement of Changes in Beneficial Ownership of Securities

* * * * *

GENERAL INSTRUCTIONS

* * * * *

1. When Form Must Be Filed

(a) This form must be filed on or before the end of the second business day following the day on which a transaction resulting in a change in beneficial ownership has been executed (See SEC Rule 16a–1(a)(2) and Instruction 4 regarding the meaning of ''beneficial owner,'' and SEC Rule 16a–3(g) regarding determination of the date of execution for specified transactions). This form and any amendment is deemed filed with the FDIC upon electronic receipt on business days during the hours of 8 a.m. until 10 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect. A form received after these business hours will be deemed filed at 8 a.m. on the following business day. If this form is submitted through FDICconnect on a non-business day, it will be deemed filed at 8 a.m. on the following business day. Business days include all weekdays that are not Federal holidays. A paper form submitted by a reporting person that has obtained a hardship exemption under applicable FDIC rules will be deemed filed with the FDIC on the date it is received by the FDIC. If this form is required to be filed on an exchange, this form and any amendment is deemed filed with the exchange on the date it is received by the exchange.

* * * * *

2. Where Form Must Be Filed

(a) A reporting person must file Form 4 in electronic format using the secure, Internet-based, FDICconnect Business Center to access the interagency Beneficial Ownership Filings system, except that a filing person that has obtained a hardship exemption under applicable FDIC rules (see 12 CFR 335.801(b)) may file the form in paper form. For information and answers to questions regarding beneficial ownership and the completion and filing of the forms please contact the FDIC Division of Supervision and Consumer Protection, Accounting and Securities Disclosure Section, 550 17th Street NW., Washington, DC 20429. For technical questions or problems relating to the use of FDICconnect or Designated Coordinator registration, contact FDICconnect toll-free at 877–275–3342 or via e-mail at *FDICconnect@fdic.gov.*

* * * * *

Note: If filing pursuant to a hardship exemption under FDIC rules, file three copies of this Form or any amendment, at least one of which is signed, with the FDIC in accordance with applicable rules. (Acknowledgement of receipt by the agency may be obtained by enclosing a self-addressed stamped postcard or envelope identifying the Form or amendment filed.)

* * * * *

4. Transactions and Holdings Required To Be Reported

* * * * *

(b) Beneficial Ownership Reported (Pecuniary Interest)

* * * * *

(v) Where more than one beneficial owner of the same equity securities must report transactions on Form 4, such owners may file Form 4 individually or jointly. Joint and group filings may be made by any designated beneficial owner. Transactions with respect to securities owned separately by any joint or group filer are permitted to be included in the joint filing. Indicate the name and address of the designated reporting person in Item 1 of Form 4 and attach a list of the names and addresses of each other reporting person. Joint and group filings must include all the required information for each beneficial owner, and such filings must be signed by each beneficial owner, or on behalf of such owner by an authorized person. Use the Filer Information screen in the interagency Beneficial Ownership Filings system to submit additional joint or group filers' names and related filing information required by this form.

If this form is being filed in paper form pursuant to a hardship exemption and the space provided for signatures is insufficient, attach a signature page. If this form is being filed in paper form, submit any attached listing of names or signatures on another Form 4, copy of Form 4 or separate page of 8½ by 11 inch white paper, indicate the number of pages comprising the report (form plus attachments) at the bottom of each report page (e.g., 1 of 3, 2 of 3, 3 of 3), and include the name of the designated filer and information required by Items 2 and 3 of the form on the attachment.

See SEC Rule 16a–3(i) regarding signatures.

* * * * *

6. Additional Information

(a) If space provided in the line items on the Form 4 is insufficient, identify and enter additional information under Explanation of Responses.

(b) If the space provided in the line items on the paper Form 4 or space provided for additional comments is insufficient, attach another Form 4, copy of Form 4 or separate 8½ by 11 inch white paper to Form 4, completed as appropriate to include the additional comments. Each attached page must include information required in Items 1, 2 and 3 of the form. The number of pages comprising the report (form plus attachments) shall be indicated at the bottom of each report page (e.g., 1 of 3, 2 of 3, 3 of 3).

(c) If one or more exhibits are included with the form, provide a reference to such exhibit(s) under Explanation of Responses. If the exhibit is being filed in paper form pursuant to a hardship exemption under applicable FDIC rules, place the designation ''P'' (paper) next to the name of the exhibit in the exhibit reference.

(d) If additional information is not reported in this manner, it will be assumed that no additional information was provided.

* * * * *

9. Amendments

(a) If this form is filed as an amendment in order to add one or more lines of ownership information to Table I or Table II of the form being amended, provide each line being added, together with one or more footnotes under

Explanation of Responses, as necessary, to explain the addition of the line or lines. Do not repeat lines of ownership information that were disclosed in the original form and are not being amended.

(b) If this form is filed as an amendment in order to amend one or more lines of ownership information that already were disclosed in Table I or Table II of the form being amended, provide the complete line or lines being amended, as amended, together with notes under Explanation of Responses as necessary to explain the amendment of the line or lines. Do not repeat lines of ownership information that were disclosed in the original form and are not being amended.

(c) If this form is filed as an amendment for any other purpose other than or in addition to the purpose described in items (a) or (b) of this General Instruction 9, provide one or more notes under Explanation of Responses, as necessary, to explain the amendment.

* * * * *

Form 4 Statement of Changes in Beneficial Ownership of Securities

* * * * *

Item 3. Date of Earliest Transaction Required to be Reported

(Month/Day/Year)

Item 4. If Amendment, Date Original Filed

(Month/Day/Year)

* * * * *

■ 12. Amend Form F–8A (referenced in § 335.111 and § 335.613) by:

■ a. Revising General Instruction 1(a);

■ b. Revising General Instruction 2(a);

■ c. Adding a note following General Instruction 2;

■ e. Revising General Instruction 4(b)(v);

■ f. Revising General Instruction 6;

■ g. Adding a new General Instruction 9;

■ h. Revising the short title of the Annual Statement of Beneficial Ownership of Securities from Form F–8A to Form 5 in the form heading;

■ i. Removing Item 3 and redesignating Items 4, 5, 6 and 7 to the information preceding Table I as Items 3, 4, 5 and 6;

■ j. Revising newly redesignated Items 3 and 4 to the information preceding Table I;

■ k. Revising the heading for columns 9 and 10 in Table II.

The revisions and additions read as follows:

Form 5 Annual Statement of Beneficial Ownership of Securities

* * * * *

GENERAL INSTRUCTIONS

* * * * *

1. When Form Must Be Filed

(a) This form must be filed on or before the 45th day after the end of the bank's fiscal year in accordance with SEC Rule 16a–3(f). This form and any amendment is deemed filed with the FDIC upon electronic receipt on business days during the hours of 8 a.m. until 10 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect. A form received after these business hours will be deemed filed at 8 a.m. on the following business day. If this form is submitted through FDICconnect on a non-business day, it will be deemed filed at 8 a.m. on the following business day. Business days include all weekdays that are not federal holidays. A paper form submitted by a reporting person that has obtained a hardship exemption under applicable FDIC rules will be deemed filed with the FDIC on the date it is received by the FDIC. If this form is required to be filed on an exchange, this form and any amendment is deemed filed with the exchange on the date it is received by the exchange.

* * * * *

2. Where Form Must Be Filed

(a) A reporting person must file Form 5 in electronic format using the secure, Internet-based, FDICconnect Business Center to access the interagency Beneficial Ownership Filings system, except that a filing person that has obtained a hardship exemption under applicable FDIC rules (see 12 CFR 335.801(b)) may file the form in paper form. For information and answers to questions regarding beneficial ownership and the completion and filing of the forms please contact the FDIC Division of Supervision and Consumer Protection, Accounting and Securities Disclosure Section, 550 17th Street, NW., Washington, DC 20429. For technical questions or problems relating to the use of FDICconnect or Designated Coordinator registration, contact FDICconnect toll-free at 877–275–3342 or via e-mail at *FDICconnect@fdic.gov.*

* * * * *

Note: If filing pursuant to a hardship exemption under FDIC rules, file three copies of this form or any amendment, at least one of which is signed, with the FDIC in accordance with applicable rules. (Acknowledgement of receipt by the agency may be obtained by enclosing a self-addressed stamped postcard or envelope identifying the form or amendment filed.)

* * * * *

4. Transactions and Holdings Required To Be Reported

* * * * *

(b) Beneficial Ownership Reported (Pecuniary Interest)

* * * * *

(v) Where more than one beneficial owner of the same equity securities must report transactions on Form 5, such owners may file Form 5 individually or jointly. Joint and group filings may be made by any designated beneficial owner. Transactions with respect to securities owned separately by any joint or group filer are permitted to be included in the joint filing. Indicate the name and address of the designated reporting person in Item 1 of Form 5 and attach a list of the names and addresses of each other reporting person. Joint and group filings must include all the required information for each beneficial owner, and such filings must be signed by each beneficial owner, or on behalf of such owner by an authorized person. Use the Filer Information screen in the interagency Beneficial Ownership Filings system to submit additional joint or group filers' names and related filing information required by this form.

If this form is being filed in paper form pursuant to a hardship exemption and the space provided for signatures is insufficient, attach a signature page. If this form is being filed in paper form, submit any attached listing of names or signatures on another Form 5, copy of Form 5 or separate page of 8½ by 11 inch white paper, indicate the number of pages comprising the report (form plus attachments) at the bottom of each report page (*e.g.,* 1 of 3, 2 of 3, 3 of 3), and include the name of the designated filer and information required by Items 2 and 3 of the form on the attachment.

See SEC Rule 16a–3(i) regarding signatures.

* * * * *

6. Additional Information

(a) If space provided in the line items on the Form 5 is insufficient, identify and enter additional information under Explanation of Responses.

(b) If the space provided in the line items on the paper Form 5 or space provided for additional comments is insufficient, attach another Form 5, copy of Form 5 or separate 8½ by 11 inch white paper to Form 5, completed as appropriate to include the additional comments. Each attached page must include information required in Items 1, 2 and 3 of the form. The number of pages comprising the report (form plus attachments) shall be indicated at the

bottom of each report page (*e.g.,* 1 of 3, 2 of 3, 3 of 3).

(c) If one or more exhibits are included on the form, provide a reference to such exhibit(s) under Explanation of Responses. If the exhibit is being filed in paper form pursuant to a hardship exemption under applicable FDIC rules, place the designation ''P'' (paper) next to the name of the exhibit in the exhibit reference.

(d) If additional information is not reported in this manner, it will be assumed that no additional information was provided.

* * * * *

9. Amendments

(a) If this form is filed as an amendment in order to add one or more lines of ownership information to Table I or Table II of the form being amended, provide each line being added, together with one or more footnotes under Explanation of Responses, as necessary, to explain the addition of the line or lines. Do not repeat lines of ownership information that were disclosed in the original form and are not being amended.

(b) If this form is filed as an amendment in order to amend one or more lines of ownership information that already were disclosed in Table I or Table II of the form being amended, provide the complete line or lines being amended, as amended, together with notes under Explanation of Responses as necessary to explain the amendment of the line or lines. Do not repeat lines of ownership information that were disclosed in the original form and are not being amended.

(c) If this form is filed as an amendment for any other purpose other than or in addition to the purpose described in items (a) or (b) of this General Instruction 9, provide one or more notes under Explanation of Responses, as necessary, to explain the amendment.

* * * * *

Form 5 Annual Statement of Changes in Beneficial Ownership of Securities

* * * * *

3. Statement for Issuer's Fiscal Year Ended

(Month/Day/Year)

4. If Amendment, Date Original Filed

(Month/Day/Year)

* * * * *

Table II—Derivative Securities Acquired, Disposed of, or Beneficially Owned (e.g., Puts, Calls, Warrants, Options, Convertible Securities)

* * * * *

9. Number of Derivative Securities Beneficially Owned at End of Issuer's Fiscal Year (Instr. 4)

10. Ownership Form of Derivative Securities: Direct (D) or Indirect (I) (Instr. 4)

* * * * *

Dated at Washington, DC, this 29th day of September, 2004.

By Order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–22384 Filed 10–5–04; 8:45 am]

BILLING CODE 6714–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19223; Directorate Identifier 2004–SW–20–AD; Amendment 39–13813; AD 2004–20–08]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. (MDHI) Model 500N and 600N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for MD Helicopters, Inc. (MDHI) Model 500N and 600N helicopters. This action requires using a bright light and a 10× or higher magnifying glass to inspect each forward and center thruster control cable assembly connector (connector) for corrosion pitting or cracking. If you find corrosion pitting or cracking, this AD also requires replacing the cable assembly with an airworthy cable assembly before further flight. This amendment is prompted by a report of a failure of the forward thruster cable assembly due to stress corrosion. The actions specified in this AD are intended to detect a corrosion-pitted or cracked connector and prevent failure of the cable assembly and subsequent loss of control of the helicopter.

DATES: Effective October 21, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 21, 2004.

Comments for inclusion in the Rules Docket must be received on or before December 6, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically;
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically;
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590;
- Fax: (202) 493–2251; or
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from MD Helicopters, Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–891–6782, or on the Web at *http://www.mdhelicopters.com.*

Examining the Dockets

You may examine the docket that contains the AD, any comments, and any other information on the Internet at *http://dms.dot.gov,* or in person at the Docket Management System (DMS) Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5228, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for the MDHI Model 500N and 600N helicopters. This action requires using a bright light and a 10× or higher magnifying glass to inspect each connector for corrosion pitting or cracking. If corrosion pitting or cracking is found, this AD also requires replacing the cable assembly with an airworthy

cable assembly before further flight. This amendment is prompted by a report of a failure of a cable assembly due to a stress corrosion crack. The actions specified in this AD are intended to detect a corrosion-pitted or cracked connector and to prevent failure of a cable assembly and subsequent loss of control of the helicopter.

We have reviewed MDHI Service Bulletin SB500N–027, SB600N–042, dated May 3, 2004 (SB). The SB describes procedures for inspecting the connectors on the forward and center cable assemblies for corrosion pitting or cracking. Also, the SB specifies replacing the cable assembly if corrosion pitting or cracking is found on the connectors.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, this AD is being issued to detect a corrosion-pitted or cracked connector on a cable assembly and to prevent failure of the cable assembly, and subsequent loss of control of the helicopter. This AD requires a one-time inspection of the connectors on the cable assemblies for corrosion pitting or cracking. If corrosion pitting or cracking is found, this AD also requires replacing the cable assembly with an airworthy cable assembly before further flight. Accomplish the actions by following the SB described previously.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability or structural integrity of the helicopter. Therefore, within the next 10 hours time-in-service or 30 days, whichever comes first, using a bright light and a 10X or higher magnifying glass, inspect each connector for corrosion pitting or cracking. If corrosion pitting or cracking is found, replacing the cable assembly with an airworthy cable assembly is required before further flight and this AD must be issued immediately. Inspecting each connector and replacing the cable assembly if corrosion pitting or cracking is found is terminating action for the requirements of this AD.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

We estimate that this AD will affect 66 helicopters. The inspections will take about 1 work hour at an average labor rate of $65 per work hour. Required parts will cost about $4520 per helicopter. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $4,290 assuming no parts will need to be replaced.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19223; Directorate Identifier 2004–SW–20–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

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 the regulation:

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD. See the DMS to examine the economic evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2004–20–08 MD Helicopters, Inc.: Amendment 39–13813. Docket No. FAA–2004–19223; Directorate Identifier 2004–SW–20–AD.

Applicability: The following model and serial number (S/N) helicopters, with forward thruster cable (cable) assembly and center cable assembly part number (P/N), installed, certificated in any category:

Model	S/N	Forward cable assembly P/N	Center cable assembly P/N
500N	With a prefix of ''LN'' and 001 through 099	500N7201–55	500N7201–57
600N	With a prefix of ''RN'' and 003 through 068	500N7201–55	500N7201–59

Compliance: Required as indicated, unless accomplished previously.

To detect a corrosion-pitted or cracked forward or center cable assembly connector (connector) and to prevent failure of the cable assembly and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 10 hours time-in-service or 30 days, whichever comes first, using a bright light and a 10X or higher magnifying glass, inspect each connector for corrosion pitting or cracking by following the Accomplishment Instructions, paragraph 2., of MD Helicopter, Inc. Service Bulletin SB500N–027, SB600N–042, dated May 3, 2004. If you find

corrosion pitting or cracking, replace the cable assembly with an airworthy cable assembly before further flight. Replacing the cable assembly with an airworthy cable assembly is terminating action for the requirements of this AD.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Los Angeles Aircraft Certification Office, FAA, for information about previously approved alternative methods of compliance.

(c) Do the inspection by following MD Helicopters, Inc. Service Bulletin SB500N–027, SB600N–042, dated May 3, 2004. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–891–6782, or on the Web at *http://www.mdhelicopters.com.* Copies may be inspected 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.*

(d) This amendment becomes effective on October 21, 2004.

Issued in Fort Worth, Texas, on September 22, 2004.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–22264 Filed 10–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19229; Directorate Identifier 2004–NM–195–AD; Amendment 39–13814; AD 2004–20–09]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This AD requires repetitive inspections for cracks, sealant damage, and corrosion of the main fittings of the main landing gear (MLG), and corrective actions if necessary. This AD is prompted by a report of a cracked main fitting of the MLG. We are issuing this AD to detect and correct fatigue cracking of the main fitting of the MLG and consequent failure of the main fitting, which could result in the collapse of the MLG.

DATES: Effective October 21, 2004.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of October 21, 2004.

We must receive comments on this AD by December 6, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. You can examine this information 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.*

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT:

Technical information: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7312; fax (516) 794–5531.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION: Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. TCCA advises that it has received a report of a cracked main fitting of the main landing gear (MLG) at the section between the forward face of the main fitting on the trunnion side and the area just above the upper attach lug radius of the shock strut. Laboratory examination has found that the fatigue crack was initiated from a corrosion pit located on the chamfer of the inner bore of the pintle pin socket of the main fitting of the MLG. This condition, if not detected and corrected in a timely manner, could cause failure of the main fitting of the MLG, which could result in the collapse of the MLG.

Relevant Service Information

Bombardier has issued Alert Service Bulletin A601R–32–099, including Appendices A through D, dated September 15, 2004. The service bulletin describes the following procedures:

- Repetitive detailed inspections for cracks of the inboard and outboard sides

of the main fitting of the MLG between the pintle pin trunnion and the radius of the shock strut lug;

- Repetitive detailed inspections for sealant damage or corrosion around the forward bushing of the left and right main fittings of the MLG;
- Repetitive ultrasonic inspections for cracks of the left and right main fittings of MLG; and
- Corrective actions if necessary. The corrective actions include replacing any cracked main fitting of the MLG with a new or serviceable main fitting; doing an eddy current inspection to verify that there is a crack on the fitting if necessary; and repeating certain inspections described previously at reduced intervals; as applicable.

TCCA mandated the service bulletin and issued Canadian airworthiness directive CF–2004–18, dated September 16, 2004, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of This AD

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCAA has kept the FAA informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to detect and correct fatigue cracking of the main fitting of the MLG and consequent failure of the main fitting, which could result in the collapse of the MLG. This AD requires accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the AD and Referenced Service Bulletin/Canadian Airworthiness Directive.''

Differences Between the AD and Referenced Service Bulletin/Canadian Airworthiness Directive

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for reporting crack indications, returning cracked parts to Messier Dowty, and submitting a comment sheet related to service bulletin quality and a sheet recording compliance with the service bulletin, this AD, like Canadian airworthiness directive CF–2004–18, will not require those actions. We do not need this information from operators.

In addition, if there is evidence of sealant damage or corrosion, the referenced service bulletin describes procedures for accomplishing only the ultrasonic inspection at intervals not to exceed 500 flight cycles. This AD, as well as the Canadian airworthiness directive, requires repeating the detailed inspection of the main fitting lateral surface within 5 days following the visual inspection of the sealant, and every 5 days thereafter, in addition to the ultrasonic inspections of the main fittings within 500 flight cycles.

Canadian airworthiness directive CF–2004–18 specifies that the required actions must be done in accordance with Bombardier Alert Service Bulletin A601R–32–099, dated September 15, 2004, or ''later revisions approved by the Chief, Continuing Airworthiness, Aircraft Certification, Transport Canada.'' We cannot use the phrase, ''or later FAA-approved revisions,'' in an AD when referring to the service document because doing so violates Office of the Federal Register (OFR) regulations for approval of materials ''incorporated by reference'' in rules. In general terms, we are required by these OFR regulations to either publish the service document contents as part of the actual AD language; or submit the service document to the OFR for approval as ''referenced'' material, in which case we may only refer to such material in the text of an AD. The AD may refer to the service document only if the OFR approved it for ''incorporation by reference.'' To allow operators to use later revisions of the referenced document (issued after publication of the AD), either we must revise the AD to reference specific later revisions, or operators must request approval to use later revisions as an alternative method of compliance with this AD under the provisions of paragraph (m) of this AD.

Interim Action

This is considered to be interim action until final action is identified, at which time we may consider further rulemaking.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19229; Directorate Identifier 2004–NM–195–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You can get more information about plain language at *http://www/faa.gov/language* and *http://www.plainlanguage.gov.*

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 the regulation:

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

under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. 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 FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2004–20–09 Bombardier, Inc. (Formerly Canadair): Amendment 39–13814. Docket No. FAA–2004–19229; Directorate Identifier 2004–NM–195–AD.

Effective Date

(a) This AD becomes effective October 21, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 through 7067 inclusive and 7069 through 8999 inclusive, certificated in any category; equipped with main landing gear (MLG) main fittings, part number (P/N) 601R85001–3 or –4 (Messier Dowty P/N 17064–101, –102, –103, or –104).

Unsafe Condition

(d) This AD was prompted by a report of a cracked main fitting of the MLG. The FAA is issuing this AD to detect and correct fatigue cracking of the main fitting of the MLG and consequent failure of the main fitting, which could result in the collapse of the MLG.

Compliance

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

Service Bulletin

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–32–099, including Appendices A, B, and D, and excluding Appendix C, dated September 15, 2004.

Initial Inspections

(g) Do the actions specified in Table 1 of this AD.

TABLE 1.—INITIAL INSPECTIONS

Do—	At the latest of—
(1) A detailed inspection for cracks of the inboard and outboard sides of the main fitting of the MLG between the pintle pin trunnion and the radius of the shock strut lug, in accordance with Part A of the service bulletin.	(i) Before the accumulation of 8,000 total flight cycles since the main fitting of the MLG was new. (ii) Within 8,000 flight cycles since the last overhaul of the MLG. (iii) Within 50 flight cycles after the effective date of this AD.
(2) A detailed inspection for sealant damage or corrosion around the forward bushing of the left and right main fittings of the MLG, in accordance with Part B of the service bulletin.	(i) Before the accumulation of 8,000 total flight cycles since the main fitting of the MLG was new. (ii) Within 8,000 flight cycles since the last overhaul of the MLG. (iii) Within 500 flight cycles after the effective date of this AD.
(3) An ultrasonic inspection for cracks of the left and right main fittings of the MLG, in accordance with Part C of the service bulletin.	(i) Before the accumulation of 8,000 total flight cycles since the main fitting of the MLG was new. (ii) Within 8,000 flight cycles since the last overhaul of the MLG. (iii) Within 500 flight cycles after the effective date of this AD.

Note 1: For the purposes of this AD, a detailed inspection is ''an intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirrors magnifying lenses, etc. may be necessary. Surface cleaning and elaborate procedures may be required.''

Repetitive Inspections

(h) Repeat the inspections required by paragraph (g) of this AD at the time specified in Table 2 of this AD.

TABLE 2.—REPETITIVE INSPECTION INTERVAL

For the inspection required by—	Repeat at intervals not to exceed—	Until the action required by—
(1) Paragraph (g)(1) of this AD	5 days	Paragraph (g)(3) of the AD is done, unless required by paragraph (j) of this AD.
(2) Paragraph (g)(2) of this AD	500 flight cycles	Paragraph (j)(2) of this AD is done.
(3) Paragraph (g)(3) of this AD	5,000 flight cycles, except as required by paragraph (j)(2) of this AD.	(None).

Corrective Actions

(i) If there is an indication of a crack during any inspection required by paragraph (g)(1), (h)(1), or (j)(1) of this AD, before further flight, do the actions specified in paragraphs (i)(1) or (i)(2) of this AD in accordance with Part A of the service bulletin.

(1) Replace the cracked main fitting of the MLG with a new or serviceable main fitting.

(2) Do an eddy current inspection to verify whether there is a crack. If there is a crack, replace the cracked main fitting of the MLG with a new or serviceable main fitting.

(j) If any sealant damage or corrosion is found during any inspection required by either paragraph (g)(2) or (h)(2) of this AD, do the actions specified in Table 3 of this AD in accordance with Part B of the service bulletin.

TABLE 3.—CORRECTIVE ACTIONS FOR SEALANT DAMAGE OR CORROSION

Do the inspection specified in—	Within—	Repeat at intervals not to exceed—	Until the action specified in—
(1) Paragraph (g)(1) of this AD	5 days after doing the inspection required by paragraph (g)(2) or (h)(2) of this AD, as aplicable.	5 days	Paragraph (j)(2) of this AD is done.
(2) Paragraph (g)(3) of this AD	500 flight cycles after doing the inspection required by paragraph (g)(2) or (h)(2) of this AD, as applicable.	500 flight cycles	(None).

(k) If there is an indication of a crack during any inspection required by paragraph (g)(3), (h)(3), or (j)(2) of this AD, before further flight, replace the cracked main fitting of the MLG with a new or serviceable main fitting in accordance with Part C of the service bulletin.

No Reporting or Returning of Parts

(l) Although the service bulletin referenced in this AD specifies to submit certain information to the airplane manufacturer and to return cracked main fittings to the supplier, this AD does not include those requirements.

Alternative Methods of Compliance (AMOCs)

(m) The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(n) Canadian airworthiness directive CF–2004–18, dated September 16, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(o) You must use Bombardier Alert Service Bulletin A601R–32–099, including Appendices A, B, and D, and excluding Appendix C, dated September 15, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. You can review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Nassif Building, Washington, DC; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on September 27, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 04–22266 Filed 10–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–04–190]

RIN 1625–AA08

Special Local Regulations for Marine Events; John H. Kerr Reservoir, Clarksville, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for ''Clarksville Hydroplane Challenge'', a power boat race to be held over the waters of the John H. Kerr Reservoir adjacent to Clarksville, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the John H. Kerr Reservoir adjacent to Clarksville, Virginia during the power boat race.

DATES: This rule is effective from 11:30 a.m. on October 9, 2004, to 5:30 p.m. on October 10, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–04–190 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: D. M. Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be impracticable, and contrary to public interest, as the event will take place before the NPRM process can be completed. Immediate action is needed to protect the safety of life at sea from the danger posed by high-speed power boats.

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**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, spectator craft and other vessels transiting the event area. However advance notifications will be made to affected waterway users via marine information broadcasts and area newspapers.

Background and Purpose

On October 9 and 10, 2004, the Virginia Boat Racing Association will sponsor the ''Clarksville Hydroplane Challenge'', on the waters of the John H. Kerr Reservoir. The event will consist of approximately 60 inboard hydroplanes racing in heats counter-clockwise around an oval racecourse. A fleet of spectator vessels is expected to gather nearby to view the competition. Due to the need for vessel control during the

event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Rule

The Coast Guard is establishing this rule on specified waters of the John H. Kerr Reservoir adjacent to Occoneechee State Park, Clarksville, Virginia. The regulated area includes a section of the John H. Kerr Reservoir approximately two miles long, and bounded in width by each shoreline. This rule will be enforced from 11:30 a.m. to 5:30 p.m. on October 9 and 10, 2004, and will restrict general navigation in the regulated area during the power boat race. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the enforcement period.

Regulatory Evaluation

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 expect the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents traffic from transiting a portion of the John H. Kerr Reservoir adjacent to Clarksville, Virginia during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts and area newspapers so mariners can adjust their plans accordingly.

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 or operators of vessels intending to transit this section of the John H. Kerr Reservoir during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced for only a short period, from 11:30 a.m. to 5:30 p.m. on October 9 and 10, 2004. Although the regulated area will apply to the entire width of the reservoir adjacent to Occoneechee State Park, traffic may be allowed to pass through the regulated area with the permission of the Coast Guard patrol commander. In the case where the patrol commander authorizes passage through the regulated area during the event, vessels must proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could 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).

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 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 effect 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 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 Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine event permit are specifically excluded from further analysis and documentation under those sections. Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this 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 amends 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, Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 100.35–T05–190 to read as follows:

§ 100.35–T05–190 John H. Kerr Reservoir, Clarksville, Virginia.

(a) *Regulated area.* A regulated area is established for the waters of the John H. Kerr Reservoir, adjacent to 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°36′12″ N, longitude 078°31′22″ W, to latitude 36°36′48″ N, longitude 078°30′47″ W, and bounded on the north by the Route 15 highway bridge. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Hampton Roads.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Group Hampton Roads with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) the operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) All persons and vessels must comply with the instructions of the Official Patrol. The operator of a vessel in the regulated area must stop the vessel immediately when instructed to do so by the Official Patrol and then proceed as directed. When authorized to transit the regulated area, all vessels must proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* This section will be enforced from 11:30 a.m. to 5:30 p.m. on October 9 and 10, 2004.

Dated: September 28, 2004.

B.R. Thomason,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 04–22507 Filed 10–5–04; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–04–184]

RIN 1625–AA08

Special Local Regulations for Marine Events; Willoughby Bay, Norfolk, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the ''Hampton Roads Sailboard Classic'', a marine event to be held October 23 and 24, 2004 on the waters of Willoughby Bay, Norfolk, Virginia. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of Willoughby Bay during the event.

DATES: This rule is effective from 10 a.m. on October 23, 2004, to 3 p.m. on October 24, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–04–184 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: D. M. Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be impracticable and contrary to public interest, as the event will take place too soon to allow the NPRM process to be completed. The danger posed to participants by wakes from transiting vessels make special local regulations necessary to provide for the safety of event participants, support craft and other vessels transiting the event area.

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**. Delaying the effective date would be contrary to the public interest,

since immediate action is needed to ensure the safety of participants, support craft, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. Additionally, advance notifications will be made to affected users of the waterway via marine information broadcasts and area newspapers.

Background and Purpose

The Windsurfing Enthusiasts of Tidewater will sponsor the marine event ''Hampton Roads Sailboard Classic'' on October 23 and 24, 2004, on the waters of Willoughby Bay, Norfolk, Virginia. The event will consist of approximately 40 sailboards racing in heats along several courses within Willoughby Bay. Spectator vessels are expected to gather near the event site to view the competition. To provide for the safety of event participants, spectators and transiting vessels during the event, the Coast Guard will temporarily restrict vessel movement in the event area during the sailboard races.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of Willoughby Bay. The temporary special local regulations will be enforced from 10 a.m. to 4:30 p.m. on October 23, 2004, and from 9:30 a.m. to 3 p.m. on October 24, 2004. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel will be allowed to enter or remain in the regulated area. Non-participating vessels desiring to transit Willoughby Bay during the event will be able to navigate safely around the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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 expect the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents traffic from transiting a portion of Willoughby Bay during the event, the effect of this regulation will not be significant because transiting vessels will be able to safely navigate around the regulated area and extensive advance notifications will be made to the maritime community via marine information broadcasts and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary.

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 or operators of vessels intending to transit this section of Willoughby Bay during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. Transiting vessels will be able to safely navigate around the regulated area. Extensive advance notifications will be made to the maritime community via marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

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 could 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).

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 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 effect 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 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 Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under those sections.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this 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 amends 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, Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 100.35–T05–184 to read as follows:

§ 100.35–T05–184 Willoughby Bay, Norfolk, VA.

(a) *Regulated area.* The regulated area is established for the waters of Willoughby Bay contained within the following coordinates:

Latitude	*Longitude*
36°58′ 36.0″ North	076°18′ 42.0″ West
36°58′ 00.0″ North	076°18′ 00.0″ West
36°57′ 49.0″ North	076°18′ 14.0″ West
36°57′ 36.0″ North	076°17′ 55.0″ West
36°57′ 26.0″ North	076°18′ 06.0″ West
36°58′ 15.0″ North	076°19′ 08.0″ West
36°58′ 36.0″ North	076°18′ 42.0″ West

All coordinates reference Datum NAD 1983.

(b) *Definitions* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Hampton Roads.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Group Hampton Roads with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in this area must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(d) *Enforcement Dates.* This section will be enforced from 10 a.m. to 4:30 p.m. on October 23, 2004 and from 9:30 a.m. to 3 p.m. on October 24, 2004.

Dated: September 23, 2004.

Sally Brice-O'Hara,

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

[FR Doc. 04–22512 Filed 10–5–04; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–04–182]

RIN 1625–AA08

Special Local Regulations for Marine Events; Choptank River, Cambridge, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the ''Chesapeakeman Ultra Triathlon'', an event to be held October 9, 2004 over the waters of Choptank River at Cambridge, MD. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Choptank River during the Chesapeakeman Ultra Triathlon swim.

DATES: This rule is effective from 6:30 a.m. to 10:30 a.m. on October 9, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–04–182 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: D. M. Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM; publishing an NPRM would be impracticable and contrary to public interest as immediate

action is necessary to protect those using the waterway. Because of the danger posed to the swimmers competing within a confined area, special local regulations are necessary to provide for the safety of event participants, support craft and other vessels transiting the event area.

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**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, support craft, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. However advance notifications will be made to users of the waterway via marine information broadcasts and area newspapers.

Background and Purpose

On October 9, 2004, the Columbia Triathlon Association will sponsor the ''Chesapeakeman Ultra Triathlon''. The swimming segment of the event will consist of approximately 300 swimmers competing across a 2.4-mile course along the Choptank River between the Hyatt Regency Chesapeake Bay Resort Beach and Great Marsh Park, Cambridge, Virginia. The competition will begin at the Hyatt Regency Beach. The participants will swim across to the finish line located at Great Marsh Park, swimming approximately 100 yards off shore, parallel with the shoreline. Approximately 20 support vessels will accompany the swimmers. Due to the need for vessel control during the swimming event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, support craft and other transiting vessels.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the Choptank River between the beachfront adjacent to the Hyatt Regency Chesapeake Bay Resort and Great Marsh Park at Cambridge, Maryland. The temporary special local regulations will be in effect from 6:30 a.m. to 10:30 a.m. on October 9, 2004. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Vessel traffic may be allowed to transit the regulated area at slow speed as the swim progresses, when the Coast Guard Patrol Commander determines it is safe to do so. The Patrol Commander will notify the public of specific enforcement times by Marine Radio Safety Broadcast. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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 expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation restricts vessel traffic from transiting a portion of Choptank River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts and area newspapers so mariners can adjust their plans accordingly.

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 or operators of vessels intending to transit this section of the Choptank River during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 6:30 a.m. to 10:30 a.m. on October 9, 2004. Vessels desiring to transit the event area will be able to transit the regulated area at slow speed as the swim progresses, when the Coast Guard Patrol Commander determines it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. 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 address listed under **ADDRESSES**. 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.

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).

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 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 effect 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 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 Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine event permit are specifically excluded from further analysis and documentation under those sections.

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 amends 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, Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 100.35–T05–182 to read as follows:

§ 100.35–T05–182 Choptank River, Cambridge, Maryland.

(a) Regulated area. The regulated area includes 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, 076°02′38″ W, thence to latitude 38°35′06″ N, 076°04′42″ W, a position located at Great Marsh Park, Cambridge, MD. All coordinates reference Datum NAD 1983.

(b) Definitions:

(1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations:* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(d) Enforcement period. This section will be enforced from 6:30 a.m. to 10:30 a.m. on October 9, 2004.

Dated: September 23, 2004.

Sally Brice-O'Hara,

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

[FR Doc. 04–22510 Filed 10–5–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–04–191]

RIN 1625–AA00

Safety Zone; Delaware River

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone from the north end of Pier 80 to the south end of Pier 84. The safety zone extends 50 yards eastward from the pier faces to the channel in the Delaware River, Philadelphia, PA. This safety zone is necessary to provide for the safety of life, property and to facilitate commerce. The temporary safety zone prohibits persons or vessels from entering within 50 yards from the north end of Pier 80 to the south end of Pier 84 on the Delaware River, unless authorized by the Captain of the Port Philadelphia, PA or designated representative.

DATES: This rule is effective from September 30, 2004 to February 1, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–04–191 and are available for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Kevin Sligh or Ensign Jill Munsch, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM and delaying its effective date would be contrary to public interest, since immediate action is needed to protect mariners against potential hazards associated with debris on the Delaware River.

Background and Purpose

On August 20, 2004 at 12:15 p.m. approximately 200 linear feet of Pier 80's eastern seawall collapsed into the Delaware River depositing debris into the western edge of the navigable channel. On August 25, 2004 at 5 p.m. approximately 90 linear feet of Pier 84's north apron was deposited into the Delaware River. A temporary safety zone was established on August 26, 2004 and will expire on October 1, 2004 (docket CGD05–04–170). The repairs to the piers are still ongoing, making it necessary to continue the Safety Zone until February 1, 2005.

The purpose of this regulation is to promote maritime safety, and to protect the environment and mariners transiting the area from submerged objects and debris. Mariners should be aware that barges will be on site for the duration of the debris removal. This rule establishes a safety zone, from the north end of Pier 80 to the south end of Pier 84 extending 50 yards out into the channel of the Delaware River in Philadelphia, PA. Mariners traveling in the vicinity of the safety zone should maintain a minimum safe speed, in accordance with the Navigation Rules as seen in 33 CFR Chapter I, Subchapters D and E. The safety zone will protect mariners transiting the area from the potential hazards associated with debris in the Delaware River. The Captain of the Port will notify the maritime community, via marine broadcasts, while the safety zone is enacted.

Regulatory Evaluation

This temporary rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 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 expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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.

This will have virtually no impact on any small entities. This rule does not require a general notice of proposed rulemaking and, therefore, it is exempt from the requirement of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C 605(b)) that this will not have a significant impact on a substantial number of small entities.

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.

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 (1–888–743–3247).

Collection of Information

This 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 rule under that Order and have determined that this rule 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 or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not affect 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 concern 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 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. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

We have analyzed this rule under Executive Order 12211, 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

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.

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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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 temporary § 165.T05–191 to read as follows:

§ 165.T05–191 Safety zone; Delaware River

(a) *Location.* The following area is a temporary safety zone: All waters and adjacent shoreline of the Delaware River encompassed from the north end of Pier 80 to south end of Pier 84 extending out 50 yards into the channel.

(b) *Regulations.* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(1) All Coast Guard assets enforcing this safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(2) All persons desiring to transit through the safety zone must contact the Captain of the Port at telephone number (215) 271–4807 or on VHF channel 13 or 16 to seek permission prior to transiting the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port Philadelphia, PA or designated representative.

(3) The Captain of the Port will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(4) Mariners transiting in the vicinity of the safety zone should maintain the minimum safe speed necessary to maintain navigation.

(c) *Definition.* The Captain of the Port means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(d) *Effective period.* This section is effective from September 30, 2004 to February 1, 2005.

Dated: September 30, 2004.

Jonathan D. Sarubbi,

Captain, U.S. Coast Guard, Captain of the Port Philadelphia.

[FR Doc. 04–22504 Filed 10–5–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–04–135]

RIN 1625–AA00

Safety Zone; Upper Chesapeake Bay, Patapsco and Severn Rivers, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on portions of the upper Chesapeake Bay and its tributaries during the movement of the USS CONSTELLATION. This action is necessary to provide for the safety of life on navigable waters during the dead ship tow of the vessel from its berth in Baltimore, Maryland to the United States Naval Academy seawall in Annapolis, Maryland, and return. This action will restrict vessel traffic in portions of the Patapsco River (including the Inner Harbor and the Northwest Harbor), Chesapeake Bay and Severn River.

DATES: This rule is effective from 7 a.m. local time on October 26, 2004 to 5 p.m. local time on November 1, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–04–135 and are available for inspection or copying at Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Waterways Management Branch, Baltimore, Maryland, 21226–1791 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Houck, at Coast Guard Activities Baltimore, Waterways Management Branch, at telephone number (410) 576–2674 or (410) 576–2693.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 2, 2004, we published a notice of proposed rulemaking (NPRM) entitled ''Safety Zone; Upper Chesapeake Bay, Patapsco and Severn Rivers, MD'' in the **Federal Register** (69

FR 46122). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The USS CONSTELLATION Museum is celebrating the 150th anniversary of the launch of the USS Constellation in 1854, and to commemorate this occasion, is sponsoring a dead ship tow of the historic sloop-of-war USS CONSTELLATION on October 26, 2004, from Baltimore, Maryland to Annapolis, Maryland. The event will mark the 23 years that the ship was stationed at the Naval Academy as a training vessel, from 1871 to 1893. Planned events include an eight-hour dead ship tow of the USS CONSTELLATION with an onboard salute with Navy pattern cannon while off Fort McHenry National Monument and Historic Site. A return dead ship tow of the USS CONSTELLATION to Baltimore, Maryland is expected to occur on November 1, 2004.

The Coast Guard anticipates a large recreational boating fleet during this event. Operators should expect significant vessel congestion along the planned route.

The purpose of this rule is to promote maritime safety and protect participants and the boating public in the Port of Baltimore, in the approaches to Baltimore Harbor, and the Severn River immediately prior to, during, and after the scheduled event. The rule will provide for a clear transit route for the participating vessels, and provide a safety buffer around the participating vessels while they are in transit. The rule will impact the movement of all vessels operating in the specified areas of the upper Chesapeake Bay and its tributaries.

Interference with normal port operations will be kept to the minimum considered necessary to ensure the safety of life on the navigable waters immediately before, during, and after the scheduled event.

Discussion of Comments and Changes

The Coast Guard received no comments on the proposed rule during the comment period published in the NPRM. No public meeting was requested, and none was held. As a result, no substantive change to the proposed regulatory text was made.

Regulatory Evaluation

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).

The Coast Guard received no comments on the proposed rule during the comment period published in the NPRM. As a result, no substantive change to the proposed regulatory text was made.

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 or operators of vessels intending to operate or anchor in portions of the Patapsco River (including the Inner Harbor and the Northwest Harbor), Chesapeake Bay and Severn River, Maryland. Because the zone is of limited size and duration, it is expected that there will be minimal disruption to the maritime community. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the river to allow mariners to make alternative plans for transiting the affected areas. In addition, smaller vessels not constrained by their draft, which are more likely to be owned by small entities, may transit around the zone and request permission from the Captain of the Port Baltimore on a case-by-case basis to enter the zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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. 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 Mr. Ronald Houck, at Coast Guard Activities Baltimore, Waterways Management Branch, at telephone number (410) 576–2674.

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).

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 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 effect 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 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 Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This regulation establishes a safety zone. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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.T05–135 to read as follows:

§ 165.T05–135 Safety Zone; Upper Chesapeake Bay, Patapsco and Severn Rivers, MD.

(a) *Definitions.* (1) *Captain of the Port.* For the purposes of this section, the term Captain of the Port means the Commander, Coast Guard Activities Baltimore or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Commander, Coast Guard Activities Baltimore to act on his or her behalf.

(2) *USS CONSTELLATION dead ship tow participants.* For the purposes of this section, the term USS CONSTELLATION dead ship tow participants includes the USS CONSTELLATION, and its accompanying towing and pre-designated emergency egress vessels.

(b) *Location.* The following area is a moving safety zone: all waters of the Patapsco River (including the Inner Harbor and the Northwest Harbor), Chesapeake Bay and Severn River, from surface to bottom, within 200 yards ahead of and 100 yards outboard and aft of the historic sloop-of-war USS CONSTELLATION, while operating from Baltimore, Maryland to Annapolis, Maryland, and return.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones found in § 165.23 of this part.

(2) Persons or vessels requiring entry into or passage through a safety zone must first request authorization from the Captain of the Port. The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF channels 16 and 13. The Captain of the Port can be contacted at (410) 576–2693.

(3) No vessel movement is allowed within the safety zone unless expressly authorized by the Captain of the Port or his designated representative.

(d) *Enforcement period.* This section will be enforced from 7 a.m. to 5 p.m. local time on October 26, 2004, and from 7 a.m. to 5 p.m. local time on November 1, 2004.

Dated: September 23, 2004.

Curtis A. Springer,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 04–22505 Filed 10–5–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 04–025]

RIN 1625–AA00

Safety Zone; San Francisco Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed safety zone within the navigable waters adjacent to Alameda Point, San Francisco Bay, California, during the filming of a movie scene involving pyrotechnics. The safety zone is necessary to provide for the safety of mariners transiting in the vicinity of the filming location and for the safety of the actors and technicians working with the pyrotechnics. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 12 p.m. September 30, 2004, to 12 p.m. on October 6, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of the docket [COTP San Francisco Bay 04–025] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ensign John Bannon, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3082.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Logistical details surrounding the event were not finalized and presented to the Coast Guard in time to draft and publish an NPRM. As such the event would occur before the rulemaking process was complete. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to temporarily close the area in order to protect the maritime public from the hazards associated with the pyrotechnics being used.

For the same reasons stated above, 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**.

Background and Purpose

Three Strikes Productions is filming portions of an upcoming major motion picture in and around the Aircraft Carrier HORNET Museum located at Pier Three, Alameda Point, San Francisco Bay, California. The special effects include simulated fire and explosion scenes conducted in the waterway in the vicinity of the HORNET, between Piers Two and Three at Alameda Point. Set up of equipment and filming is scheduled to take place from September 30 to October 6, 2004. This temporary safety zone is necessary to protect the public, along with vessels and other property from the hazards associated with the event.

Discussion of Rule

The safety zone will encompass the navigable waters around and under the filming area, which is located between Piers Two and Three at Alameda Point, CA from September 30 to October 6, 2004. Although actual filming will only occur during evening hours, the safety zone is required for the entire period to protect the equipment associated with the pyrotechnics and filming. The pyrotechnics featured in the scenes to be filmed at this location consist of burning propane to simulate a fire. The propane fire will be short in duration, and is not expected to impact the waterway or the marine environment.

The safety zone will be located shoreward of a line drawn between Alameda Point Pier 2 in approximate position 37° 46′28.0″ N, 122° 18′20.0″ W and Alameda Point Pier 3 in approximate position 37° 46′20.0′ N, 122° 18′19.0″ W. Entry into, transit through or anchoring within the safety zone is prohibited, unless authorized by the Captain of the Port, or his designated representative.

U.S. Coast Guard personnel will enforce this safety zone. Other Federal, State, or local law enforcement agencies may assist the Coast Guard, including the Coast Guard Auxiliary. Title 33, Code of Federal Regulations, Section 165.23, prohibits any unauthorized person or vessel from entering or remaining in a safety zone. Vessels or persons violating this section may be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the safety zone described herein, is punishable by civil penalties (not to exceed $32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment from 5 to 10 years and a maximum fine of $250,000) and in rem liability against the offending vessel. Any person who violates this section using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation also faces imprisonment from 10 to 25 years.

Regulatory Evaluation

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).

Although this safety zone will restrict boating traffic within San Francisco Bay, the effect of this regulation will not be significant as the safety zone will encompass only a small portion of the waterway and will be short in duration. The entities most likely to be affected are pleasure craft engaged in recreational activities.

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.

For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. § 605(b) that this rule is not expected to have a significant economic impact on a substantial number of entities, some of which may be small entities: The owners and operators of pleasure craft engaged in recreational activities and sightseeing. The safety zone will not have a significant economic impact on a substantial number of small entities for several reasons: Vessel traffic can pass safely around the area, vessels engaged in recreational activities and sightseeing have ample space outside of the safety zone to engage in these activities, and this zone will encompass only a small portion of the waterway for a limited period of time. The maritime public will be advised of the safety zone via public notice to mariners.

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 could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions, options for compliance, or assistance in understanding this rule, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

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).

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 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 effect 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 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 Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a safety zone.

A final ''Environmental Analysis Checklist'' and a final ''Categorical Exclusion Determination'' will be available for review in the docket indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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.T11–043 to read as follows:

§ 165.T11–043 Safety Zone: San Francisco Bay, CA.

(a) *Location.* The safety zone will encompass the navigable waters of San Francisco Bay shoreward of a line located between Alameda Point Pier Two in approximate position 37°46′28.0″ N, 122°18′20.0″ W, and Alameda Point Pier Three in approximate position 37°46′20.0″ N, 122°18′19.0″ W.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port or his designated representative.

(2) Persons desiring to transit the area of the safety zone may contact the Captain of the Port at telephone number 415–399–3547 or on VHF-FM channel 16 (156.8 Mhz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(c) *Enforcement.* All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Patrol personnel comprise of commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(d) *Effective Dates.* The safety zone becomes effective at 12 p.m. on

September 30, 2004, and will remain in effect until October 6, 2004. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of the safety zone and will announce that fact via Broadcast Notice to Mariners.

Dated: September 24, 2004.

Gordon A. Loebl,

Commander, U.S. Coast Guard, Acting Captain of the Port, San Francisco Bay, California.

[FR Doc. 04–22508 Filed 10–5–04; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Jacksonville 04–093]

RIN 1625–AA00

Safety Zone; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed safety zone on the St. Johns River, Jacksonville, FL, for the Navy Sea and Sky Spectacular. The safety zone is needed to protect boaters from the hazards associated with high speed, low flying, aircraft participating in flight demonstrations during the Air Show. Anchoring, mooring, or transiting within this zone is prohibited, unless authorized by the Captain of the Port, Jacksonville, FL.

DATES: This rule is effective from noon on October 28, 2004, through 4 p.m. on October 31, 2004.

ADDRESSES: Documents mentioned in this preamble as being available in the docket, are part of docket [COTP Jacksonville 04–093] and are available for inspection and copying at Coast Guard Marine Safety Office Jacksonville, 7820 Arlington Expressway, Suite 400, Jacksonville, Florida, 32211, between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Carol Swinson at Coast Guard Marine Safety Office Jacksonville, FL, tel: (904) 232–2640, ext. 155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NRPM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, and delaying the rule's effective date is contrary to public safety because immediate action is necessary to protect the public and waters of the United States. Moreover, a NPRM is unnecessary due to the limited amount of time this rule will be in effect.

For the same reasons, 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**. The Coast Guard will issue a broadcast notice to mariners and may place Coast Guard vessels in the vicinity of this zone to advise mariners of the restriction.

Background and Purpose

The Coast Guard is establishing a temporary fixed safety zone on the St. Johns River, Jacksonville, FL. The safety zone will be enforced during the 2004 Jacksonville Sea and Sky Spectacular, from noon until 4 p.m. October 28, 2004, through October 31, 2004. The safety zone is needed to protect boaters from the hazards associated with high speed, low flying, aircraft participating in flight demonstrations during the Air Show. The safety zone will originate at position 30°14′37″ N, 081°39′45″ W, and extend east to 30°14′37″ N, 081°38′00″ W, then south to 30°13′41″ N, 081°38′00″ W, then west to 30°13′41″ N, 081°39′48″ W, then back to the original point. Anchoring, mooring, or transiting within this zone is prohibited, unless authorized by the Captain of the Port, Jacksonville, FL.

Regulatory Evaluation

This regulation 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 cost and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has exempted it from review under the order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS) because these regulations will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

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

The Coast Guard certifies under section 5 U.S.C. 605(b) that this rule will not have a significant economic impact upon a substantial number of small entities because the regulation will only be enforced for approximately four hours each day it is in effect and the public will be made aware of the closure times via broadcast notices to mariners. The impact on routine navigation is expected to be minimal because vessel traffic is not excessive at that part of the river and traffic may be granted permission to enter the zone by the Captain of the Port or his representative if the situation allows.

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. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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 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).

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 State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although 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 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 safety that may disproportionately affect children.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

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 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 significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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. A new temporary § 165.T07–093 is added to read as follows:

§ 165.T07–093 Safety Zone St. Johns River, Jacksonville, FL

(a) *Regulated area.* The safety zone will originate at position 30°14′37″ N, 081°39′45″ W, and extend east to 30°14′37″ N, 081°38′00″ W, then south to 30°13′41″ N, 081°38′00″ W, then west to 30°13′41″ N, 081°39′48″ W, then back to the original point.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Jacksonville, FL.

(c) *Dates.* This rule is effective from October 28, 2004, through October 31, 2004, and will be enforced from noon to 4:00 p.m. for each day it is in effect.

Dated: August 26, 2004.

David L. Lersch,

Captain, U. S. Coast Guard, Captain of the Port Jacksonville.

[FR Doc. 04–22509 Filed 10–5–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 04–024]

RIN 1625–AA00

Safety Zone; San Francisco Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed safety zone within the navigable waters of San Francisco Bay, CA, for a three-day minesweeping exercise called operation ''Lead Shield.'' During the exercise, mine-hunting vessels will practice locating 6 dummy mine-shapes (non-explosive training devices) positioned in the vicinity of Anchorage 8. The purpose of the safety zone is to provide for the safety of mariners in the vicinity as well as those involved in the exercise by allowing only those directly involved in the exercise to enter into, transit through, or anchor within the exercise area.

DATES: This rule is effective from 5 a.m. on October 5, 2004 to 8 p.m. on October 7, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of the docket [COTP San Francisco Bay 04–024] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug L. Ebbers, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–2770.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the complex coordination involved in planning the event, major planning components of the mine-hunting

exercise were only recently completed, and the logistical details surrounding the location and schedule were not finalized and presented to the Coast Guard in time to draft and publish an NPRM. As such the exercise would occur before the rulemaking process was complete. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to temporarily close the area in order to protect the maritime public from the hazards associated with the mine-hunting exercise.

For the same reasons stated above, 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**.

Background and Purpose

As part of the Navy's efforts to develop and maintain proficiency in anti-terrorism and force protection, Operation ''Lead Shield'' provides an important training opportunity for several naval vessels to hone their mine-hunting skills. The Operation involves the placement of 6 dummy mine-shapes within Anchorage 8 and the dredged channel immediately south of Anchorage 8 in San Francisco Bay. This safety zone is necessary to provide for the safety of mariners in the vicinity as well as those involved in the exercise by allowing only those directly involved in the exercise to enter into, transit through, or anchor within the exercise area while mine-hunting operations are being conducted.

Discussion of Rule

The following area will constitute a temporary safety zone: All navigable waters of Anchorage 8 and all navigable waters of the channel located between Anchorage 8 and Anchorage 9 as bounded by the following positions: 37°46′40″ N, 122°21′23″ W; thence to 37°46′28″ N, 122°21′17″ W; thence to 37°46′22″ N, 122°19′07″ W; thence to 37°46′05″ N, 122°18′31″ W; thence to 37°46′18″ N, 122°17′55″ W; thence to 37°46′32″ N, 122°17′59″ W; thence returning to the point of origin. Entry into, transit through or anchoring within the safety zone is prohibited, unless authorized by the Captain of the Port, or his designated representative.

U.S. Coast Guard personnel will enforce this safety zone. Other Federal, State, or local law enforcement agencies may assist the Coast Guard, including the Coast Guard Auxiliary. Section 165.23 of Title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in a safety zone. Vessels or persons violating this section may be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment from 5 to 10 years and a maximum fine of $250,000) and in rem liability against the offending vessel. Any person who violates this section using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation also faces imprisonment from 10 to 25 years. Vessels or persons violating this section may also be subject to the penalties set forth in 50 U.S.C. 192: Seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years, and a maximum civil penalty of $25,000 for each day of a continuing violation.

Regulatory Evaluation

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).

Although this safety zone will restrict boating traffic within the vicinity of Anchorage 8 in San Francisco Bay, the effect of this regulation will not be significant for several reasons: vessel traffic can pass safely around the area, vessels engaged in recreational activities and sightseeing have ample space outside of the safety zone to engage in these activities, and this zone will encompass only a small portion of the waterway for a limited period of time. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing.

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.

For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. § 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

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 could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions, options for compliance, or assistance in understanding this rule, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

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).

Collection of Information

This rule contains no new collection of information requirements 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 or more in any one year.

Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect 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 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 Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a safety zone.

A final ''Environmental Analysis Checklist'' and a final ''Categorical Exclusion Determination'' will be available for review in the docket indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and record keeping 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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.T11–042 to read as follows:

§ 165.T11–042 Safety Zone: San Francisco Bay, CA.

(a) *Location.* The following area is designated as a safety zone: All of Anchorage 8 as described in 33 CFR § 110.224(e)(5) as well as the channel between Anchorage 8 and Anchorage 9 as bounded by the following positions: 37°46′40″ N, 122°21′23″ W; thence to 37°46′28″ N, 122°21′17″ W; thence to 37°46′22″ N, 122°19′07″ W; thence to 37°46′05″ N, 122°18′31″ W; thence to 37°46′18″ N, 122°17′55″ W; thence to 37°46′32″ N, 122°17′59″ W; thence returning to the point of origin. [NAD 83]

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited unless authorized by the Captain of the Port or his designated representative.

(2) Persons desiring to transit the area of the safety zone may contact the Captain of the Port at telephone number 415–399–3547 or on VHF–FM channel 16 (156.8 Mhz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(c) *Enforcement.* All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

(d) *Effective Dates.* This safety zone will be in effect from 5 a.m. on October 5, 2004 to 8 p.m. on October 7, 2004. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of the safety zone and will announce that fact via Broadcast Notice to Mariners.

Dated: September 27, 2004.

Gordon A. Loebl,

Commander, U.S. Coast Guard, Acting Captain of the Port, San Francisco Bay, California.

[FR Doc. 04–22511 Filed 10–5–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. 2004–T–046]

RIN 0651–AB82

Waiver of Pixel Requirement for Drawings Filed Electronically

AGENCY: Patent and Trademark Office, Commerce.

ACTIONS: Waiver of rule requiring certain specified pixel count for drawings submitted electronically.

SUMMARY: The United States Patent and Trademark Office (''Office'') is waiving the requirement that drawings filed through the Trademark Electronic Application System (''TEAS'') have a length and width of no less than 250 pixels and no more than 944 pixels.

DATES: *Applicability Date:* The requirement of 37 CFR 2.53(c) are hereby waived as of October 6, 2004.

FOR FURTHER INFORMATION CONTACT: Cheryl L. Black, Office of the Commissioner for Trademarks, by telephone at (703) 308–8910, ext. 153, or by e-mail to *cheryl.black@uspto.gov.*

SUPPLEMENTARY INFORMATION:

Background

A final rule amending the Trademark Rules of Practice was published on September 26, 2003, at 68 FR 55748. The purpose of the final rule was to clarify and improve the procedures for processing trademark applications, and to implement the Madrid Protocol Implementation Act of 2002, Public Law 107–273, 116 Stat. 1758, 1913–1921 (''MPIA''), which provide a system for obtaining an international registration. The MPIA amended the Trademark Act of 1946 to implement the provisions of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (''Madrid Protocol''). The final rule added a new § 2.53, setting forth the requirements for a drawing filed through TEAS. Section 2.53(c) provides as follows:

(c) *Requirements for digitized image:* The image must be in .jpg format and scanned at no less than 300 dots per inch and no more than 350 dots per inch with a length and width of no less than 250 pixels and no more than 944 pixels. All lines must be clean, sharp and solid, not fine or crowded, and produce a high quality image when copied.

These requirements were deemed necessary to ensure that the Office's database contains a clear and accurate reproduction of the mark and meets the 8 cm by 8 cm size limit that is required for an international application under the Madrid Protocol.

The Office has determined that it is not always necessary to have the pixel count required by the rule in order to produce a clear and accurate reproduction of a mark.

Partial Waiver of § 2.53(c)

Accordingly, until further notice, the Office hereby waives the requirement of § 2.53(c) that drawings filed through TEAS must have a length and width of no less than 250 pixels and no more than 944 pixels. Although the requirement is hereby waived, the Office encourages applicants to continue to submit drawings with a length and width of no less than 250 pixels and no more than 944 pixels.

The other requirements of § 2.53(c) remain in effect. That is, a drawing filed through TEAS must be in .jpg format and scanned at no less than 300 dots per inch and no more than 350 dots per inch. All lines must be clean, sharp and solid, not fine or crowded, and produce a high quality image when copied.

Other Considerations

The change addressed in this rule is limited to waiving a requirement that drawings filed through TEAS have a length and width of no less than 250 pixels and no more than 944 pixels. This change involves rules of agency practice and procedure under 5 U.S.C. 553(b)(A). Therefore, prior notice and opportunity for public comment, and thirty-day advance publication, are not required pursuant to 5 U.S.C. 553 (or any other law). As a result, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required. *See* 5 U.S.C. 603.

Dated: September 24, 2004.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 04–22365 Filed 10–5–04; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[OW–2004–0034; FRL–7825–2]

Revised Allotment Formula for Interstate Monies Appropriated Under Section 106 of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation revises the allotment formula for allotting funds appropriated under section 106 of the Clean Water Act (CWA) to interstate agencies for use in implementing specific elements of Clean Water Act programs. Section 106 of the CWA authorizes the Environmental Protection Agency (EPA) to provide grants to states, interstate agencies, and Indian tribes qualified under CWA section 518(e) to assist them in administering programs for the prevention, reduction, and elimination of water pollution. The allotment formulas for the state and tribal portions of the CWA section 106 Grant Program are not affected by this action.

DATES: This regulation is effective October 6, 2004.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OW–2004–0034. All documents in the docket are listed in the EDOCKET Index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Water Docket in the EPA Docket Center (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Carol Crow, Office of Wastewater Management (4201M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The telephone number is (202) 564–0644; facsimile number (202) 501–2399; and e-mail address is *crow.carol@epa.gov.*

SUPPLEMENTARY INFORMATION: CWA section 106(a) provides general authority for grants to states, interstate agencies, and Indian tribes qualified under CWA section 518(e) to assist them in administering programs for the prevention, reduction, and elimination of water pollution. Section 106(b) of the CWA directs the EPA Administrator to make allotments from sums appropriated by Congress in each fiscal year ''on the basis of the extent of the pollution problem in the respective states.'' National data quantifying the extent of the pollution problem in each state have increased in reliability and availability since the first CWA section 106 grants to states and interstates were made in 1972. To reflect this improvement, the formulae for making state and interstate allocations on the basis of the extent of the pollution problem underwent several revisions. The most recent revision was published

as a final rule in the May 3, 1999, **Federal Register** (64 FR 23734). To prevent sudden fluctuations in annual state section 106 grant funding that could compromise the effectiveness of state programs, the revised formula for allotting funds to the states established a funding floor based on each state's previous level of funding. This ''hold harmless'' provision ensures that unless there is a decrease in the CWA section 106 state appropriation, each state will receive at least the same level of funding as the previous year.

The state funding floor is adjusted for inflation when the funds appropriated for states under the Water Pollution Control State grant program increase from the preceding fiscal year. These adjustments are made on the basis of the cumulative change in the Consumer Price Index (CPI), published by the U.S. Department of Labor, since the most recent year in which Water Pollution Control State grant funding increased. Inflation adjustments for states are capped at the lesser of the percentage of change in appropriated funds or the cumulative percentage change in the inflation rate.

The section 106 interstate formula historically has not used a funding floor to allocate funds. However, due to fluctuations in interstate allocations since the implementation of the most recent section 106 state and interstate formula revisions, and in response to a request from eligible interstate agencies, EPA is modifying the interstate allotment formula to incorporate a funding floor and an inflation factor so that it is consistent with the current state allocation formula. This ''hold harmless'' provision will ensure that unless there is a decrease in the CWA section 106 state appropriation, each interstate agency will receive, at a minimum, the same level of section 106 funding received in the previous fiscal year.

The funding floor will be adjusted for inflation when the funds appropriated for states under the Water Pollution Control State grant program increase from the preceding fiscal year. These adjustments will be made on the basis of the cumulative change in the CPI, published by the U.S. Department of Labor, since the most recent year in which the Water Pollution Control State grant funding increased. Inflation adjustments to the interstate agency funding floor will be capped at the lesser of the percentage of change in appropriated funds or the cumulative percentage change in the inflation rate. Any section 106 appropriated funds allocated to the interstate agencies through the interstate set-aside above the amount needed to meet the funding floor described above will be distributed based on ''the extent of the pollution problem in the respective states.'' Specifically, in the case of interstate agencies, this additional allotment will be based on the extent of the pollution problem in those states within the drainage basin or watershed area covered by the compact of each interstate agency. This variable component of the current interstate allotment formula remains unchanged by this action.

Regulated Entities: The six interstate agencies eligible to receive grants under section 106 of the Clean Water Act are regulated by this rule. They are: the New England Interstate Water Pollution Control Commission; Interstate Environmental Commission; Interstate Commission of the Potomac River Basin; Delaware River Basin Commission; Susquehanna River Basin Commission; and the Ohio River Valley Water Sanitation Commission.

Background: The current CWA section 106 interstate agency allotment formula was finalized in FY 1999. Since FY 1999, the interstate set-aside has been set at the level of 2.6 percent of the total funds appropriated for states under the CWA Section 106 Grant Program. The current section 106 interstate agency allotment formula consists of two parts: (1) a base allotment; and (2) a variable allotment. *See,* 40 CFR 35.162(c)(1) and (2).

The base allotment of the current formula ensures that each interstate agency receives a minimum base allotment of $125,000 to provide for coordination activities among its member states. However, no more than 50 percent of the total funding available through the interstate set-aside may be allocated as part of the base allotment. If, given the 50 percent limitation placed on the base allotment, the amount of funding available through the interstate set-aside is insufficient to provide each interstate agency with $125,000, then each interstate agency receives a base allotment equal to 50 percent of the total interstate set-aside divided by six; the number of interstate agencies.

The variable allotment provides for funds to be allocated to interstate agencies on the basis of ''the extent of the pollution problem in the respective States;'' specifically, in the case of the allotment to interstate agencies, those states within the drainage basin or watershed area covered by the compact of each interstate agency. Funds not allotted under the base allotment are allocated to interstate agencies based on each interstate agency's share of their member states' section 106 allotment ratios. The state allotment ratios for those states involved in compacts with more than one interstate agency are allocated among such interstate agencies based on the percentage of each state's territory that is situated within the drainage basin or watershed area covered by each compact. Updates to the data sources used to determine the state allotments under the CWA section 106 state allocation formula automatically result in corresponding updates to the variable allotment to the interstate agencies.

While the current interstate ''base allotment'' ensures a minimum $125,000 base level of funding for all interstate agencies, increases in funding available to interstate agencies since the formula revisions in 1999 have increased each interstate agency's total allotment. As a result, the base allotment level of funding is no longer sufficient to protect each interstate agency from potentially significant fluctuations in total funding resulting from the regularly scheduled updates to the support data for the section 106 state formula. This has resulted in unexpected decreases in funding for some interstates and has impacted their ability to plan for and implement their program activities. This revision is meant to protect the interstate agencies from the most detrimental impacts of such adjustments in the allocation of section 106 funds.

Statutory and Executive Order Reviews: Under Executive Order 12866 (58 FR 51735, October 4, 1993), this regulation is not a ''significant regulatory action'' and is therefore not subject to OMB review. Because this grant regulation is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). In addition, this regulation does not significantly or uniquely affect small governments. This regulation does not have tribal implications, as specified in Executive Order 13175 (63 FR 67249, November 9, 2000). This regulation will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This regulation is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This regulation does not involve technical standards; thus, the

requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This regulation does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Since this final grant rule contains legally binding requirements, it is subject to the Congressional Review Act, 5 U.S.C. 801 *et seq.,* and EPA will submit this rule in its report to Congress under the Act.

List of Subjects in 40 CFR Part 35

Environmental protection, Administrative practices and procedures, Environmental program grants, Water pollution control.

Dated: September 30, 2004.

Mike O. Leavitt,

Administrator.

■ EPA amends 40 CFR part 35 as follows:

■ 1. The authority citation for part 35, subpart A continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.;* 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 300f *et seq.;* 42 U.S.C. 6901 *et seq.;* 7 U.S.C. 136 *et seq.;* 15 U.S.C. 2601 *et seq.;* 42 U.S.C. 13101 *et seq.;* Pub. L. 104–134, 110 Stat. 1321, 1321–299 (1966); Pub. L. 105–65, 111 Stat. 1344, 1373 (1997).

Subpart A—Amended

■ 2. Section 35.162 is amended by revising paragraphs (c) introductory text and (c)(1) to read as follows:

§ 35.162 Basis for allotment.

* * * * *

(c) *Interstate allotment formula.* EPA will set-aside 2.6 percent of the funds appropriated for the Water Pollution Control State grant program for interstate agencies. The interstate agency Water Pollution Control grant allotment formula consists of two parts: a funding floor with provisions for periodic adjustments for inflation, and a variable allotment.

(1) *Funding Floor.* A funding floor is established for each interstate agency. Each interstate's funding floor for FY 2005 will be at least equal to its FY 2003 allotment. Beginning in FY 2006, the interstate funding floor will ensure that unless there is a decrease in the CWA section 106 state appropriation, each interstate will receive at a minimum, the same level of funding received in the previous fiscal year. The funding floor for each interstate agency will be adjusted for inflation when the funds appropriated for states under the Water Pollution Control State grant program increase from the preceding fiscal year. These adjustments will be made on the basis of the cumulative change in the Consumer Price Index (CPI), published by the U.S. Department of Labor, since the most recent year in which Water Pollution Control State grant funding increased. Inflation adjustments to the interstate agency funding floor will be capped at the lesser of the percentage of change in appropriated funds or the cumulative percentage change in the inflation rate. If the appropriation for states under the Water Pollution Control State grant program decreases in future years, the funding floor will be disregarded and all interstate agency allotments will be reduced by an equal percentage.

* * * * *

[FR Doc. 04–22523 Filed 10–6–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA156–5084a; FRL–7824–2]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; NO_X RACT Determinations for Washington Gas Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Virginia State Implementation Plan (SIP). The revision consists of a reasonably available control technology (RACT) for the control of nitrogen oxides (NO_X) from Washington Gas Company, Ravensworth Station, Registration No. 72277, located in Fairfax County, Virginia. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on December 6, 2004 without further notice, unless EPA receives adverse written comment by November 5, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by VA156–5084 by one of the following methods:

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

B. *E-mail: morris.makeba@epa.gov.*

C. *Mail:* Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. VA156–5084. EPA's policy is that all comments received will be included in the public docket without change, 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 Federal 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 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.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Commonwealth of Virginia, Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Betty Harris, (215) 814–2168, or by e-mail at *harris.betty@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Commonwealth of Virginia submitted a formal revision on April 26, 2004 and a supplemental submittal on August 18, 2004 to its State Implementation Plan (SIP). The SIP revision consists of a RACT determination, contained in the permit to operate, for the control of NO_X from Washington Gas Company, Ravensworth Station, Registration No. 72277, located in Fairfax County, Virginia.

II. Summary of SIP Revision

Washington Gas Company, Ravensworth Station, Registration No. 72277

The Washington Gas Company owns and operates a peak shaving, propane storage facility in Springfield, Virginia (the Ravensworth Station). VADEQ submitted a permit to operate for Washington Gas Company to implement RACT requirements for ten (10) natural gas-fired, Ingersoll Rand Model engine-driven compressors, one natural gas-fired Caterpillar model electrical generator, three (3) natural gas-fired Erie City boilers, and one natural gas-fired Cleaver Brooks boiler.

Emissions Controls

The NO_X emissions from each of the compressor engines shall be controlled by a combination of engine tuning and good combustion practices. Good combustion practices shall involve the continuous operation of the engines at optimum performance by maintaining operating parameters within ranges established during tuning and performance testing events, which will reduce NO_X emissions. Prior to the tuning events, Washington Gas Company shall develop a tuning plan, which describes the activity to be involved in the tuning event. The plan shall provide the rationale for optimizing specific parameters and their significance in reducing NO_X. The plan shall be submitted to VADEQ at least 30 days prior to the performance test. NO_X emissions from the compressor engines, boilers and Caterpillar generator shall be controlled by proper operation and maintenance. Operators shall be trained in the proper operation of all such equipment. Washington Gas Company shall maintain records of the required training including a statement of time, place and nature of training provided. The gas company shall have available good written operating procedures and a maintenance schedule. These procedures shall be based on the manufacturer's recommendations, at minimum. All records required by this condition shall be kept on site and made available for inspection by VADEQ.

Emissions Limitations

A NO_X emission limit for each compressor engine will be established based on the results of the performance tests. The emission limits based on the performance test required, each compressor engine shall be operated and maintained in accordance with the manufacturers' specifications and, to the extent practicable, in manner consistent with good air pollution control practices for minimizing emissions. NO_X emissions from each boiler shall not exceed 0.20 lbs/MMBtu. NO_X emissions from the Caterpillar generator shall not exceed 1.5 g/bhp-hr.

Testing

The gas company shall conduct two sets of performance tests to measure NO_X emissions in the exhaust stack of one of each model of compressor engine. The first set of tests, to be conducted prior to the tuning event, shall be for the purpose of establishing a baseline NO_X emission rate for each unit tested. The second set of tests, to be conducted following the tuning event, shall be used to evaluate the effectiveness of the tuning event and to correlate specific engine operating parameters to emissions. The gas company shall submit an original and one copy of a test protocol at least 30 days prior to testing. Copies of the test results shall be submitted to VADEQ within 45 days after test completion. The gas company shall also prepare a report, which provides the parametric data collected, the correlation to NO_X emissions, and the selection of appropriate operating ranges to each operating parameter. The report shall be submitted to VADEQ along with the test report. The gas company shall perform tests to measure NO_X emissions in the exhaust stack of two of four boilers to demonstrate compliance with the emission limit. The gas company shall submit a copy of the test protocol at least 30 days prior to testing. The test results shall be submitted to VADEQ within 45 days after test completion and shall conform to the test report format.

On Site Records

The gas company shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit. These records shall include, but are not limited to the following:

a. The tuning plan.

b. The report detailing results of the tuning event, the parametric data collected, the correlation of operating parameters to emissions, and the selection of operating ranges of the parameters.

c. The performance test reports for the compressor engines, including the results of both pre- and post-tuning.

d. The performance test report for the boilers.

e. Records of compressor engine, boiler and Caterpillar generator operator training, maintenance schedules and record of maintenance performed.

These records shall be available for inspection by VADEQ and shall be current for the most recent five years.

III. EPA's Evaluation of the SIP Revisions

EPA is approving this SIP submittal because the Commonwealth established and imposed requirements in accordance with the criteria set forth in SIP-approved regulations for imposing RACT. The Commonwealth has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with these requirements.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or

environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *.'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a State agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only State enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the State plan, independently of any State enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, State audit privilege or immunity law.

V. Final Action

EPA is approving revisions to the Commonwealth of Virginia's SIP which establish and require NO_X RACT for Washington Gas Company, Ravensworth Station, located in Fairfax County, Virginia. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 6, 2004 without further notice unless EPA receives adverse comment by November 5, 2004. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

VI. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report

regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for Washington Gas Company, Ravensworth Station, located in Fairfax County, Virginia.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, pertaining to the NO_X RACT for Washington Gas Company, Ravensworth Station, located in Fairfax County, Virginia, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 28, 2004.

Thomas Voltaggio,

Acting, Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

■ 2. Section 52.2420, the table in paragraph (d) is amended by adding entries for ''Washington Gas Company, Ravensworth Station'' at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED VIRGINIA SOURCE-SPECIFIC REQUIREMENTS

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
*	*	*	*	*
.....	.....		[Insert **Federal Register** page number where the document begins].	
Washington Gas Company, Ravensworth Station	Registration No. 72277.	04/16/04 08/11/04	10/06/04	52.2420(d)(6).

* * * * *

[FR Doc. 04–22360 Filed 10–5–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040112010–4114–02; I.D. 093004C]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Closure of the Eastern U.S./Canada Area and Prohibition of Harvesting, Possessing, or Landing of Yellowtail Flounder from the U.S./Canada Management Area

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

ACTION: Closure of the Eastern U.S./Canada Area and prohibition of harvesting, possessing, or landing of yellowtail flounder from the U.S./Canada Management Area.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has determined that 85 percent of the total allowable catch (TAC) of Georges Bank (GB) yellowtail flounder allocated to be harvested from the Western and Eastern U.S./Canada Areas has been harvested by October 1, 2004. To prevent the GB yellowtail flounder TAC allocation from being exceeded, the Regional Administrator is closing the Eastern U.S./Canada Area to all limited access NE multispecies days-at-sea (DAS) vessels, unless participating in a future approved Special Access Program (SAP) for which the TAC allocation for the target stock for that SAP has not been fully harvested. In addition, the Regional Administrator is prohibiting all limited access NE multispecies DAS vessels from harvesting, possessing, or landing GB yellowtail flounder from within the entire U.S./Canada Management Area, effective October 1, 2004.

DATES: Effective October 1, 2004, 2004, through April 30, 2005.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Policy Analyst, (978) 281–9141, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the yellowtail flounder landing limit within the Western and Eastern U.S./Canada Areas are found at 50 CFR 648.85(a)(3)(iv)(C). The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./Canada Management Area, under specific conditions. The TAC allocation for GB yellowtail flounder for the 2004 fishing year was specified at 6,000 mt in the final rule implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) (April 27, 2004, 69 FR 22906). Once 30 percent and/or 60 percent of the TAC allocations specified for the U.S./Canada Management Area are projected to have been harvested, the regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to modify or close access to the Eastern U.S./Canada Area to all limited access NE multispecies DAS vessels and prohibit all limited access NE multispecies DAS vessels from harvesting, possessing, or landing GB yellowtail flounder from the entire U.S./Canada Management Area to prevent over-harvesting the yellowtail flounder TAC allocation.

Based upon Vessel Monitoring System reports and other available information, the Regional Administrator has determined that 85 percent of the GB yellowtail flounder TAC of 6,000 mt has been harvested by October 1, 2004. Due to concerns regarding expected yellowtail flounder bycatch by vessels targeting groundfish other than yellowtail flounder within the U.S./Canada Management Area and the

potential impact of scallop vessels fishing in Closed Area II under the Sea Scallop Access Program proposed under Framework 16/39 to the Atlantic Sea Scallop and NE Multispecies FMPs, respectively, the Regional Administrator is closing the Eastern U.S./Canada Area to all limited access NE multispecies DAS vessels, unless they are participating in a future approved SAP for which the TAC allocation for the target stock for that SAP has not been fully harvested. In addition, the Regional Administrator is prohibiting all limited access NE multispecies DAS vessels from harvesting, possessing, or landing GB yellowtail flounder from the entire U.S./Canada Management for the remainder of the fishing year, effective October 6, 2004. This action is being taken at this time to ensure that the TAC for GB yellowtail flounder will not be exceeded during the 2004 fishing year.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: September 30, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–22481 Filed 10–1–04; 3:29 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 031216314–3314–01; I.D. 092904C]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Inseason Adjustments

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

ACTION: Inseason adjustments to management measures; request for comments.

SUMMARY: NMFS announces changes to the commercial and recreational fisheries, and to the commercial fishery's trawl rockfish conservation areas (RCAs) for the Pacific Coast groundfish fishery. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), will allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) October 1, 2004, until the 2005–06 annual specifications and management measures are effective; unless modified, superseded, or rescinded through a publication in the **Federal Register**. Comments on this rule will be accepted through November 1, 2004.

ADDRESSES: You may submit comments, identified by [092904C], by any of the following methods:

- E-mail: *GroundfishInseason#6.nwr@noaa.gov*: identified by the I.D. number in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 206–526–6736
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070; or Rod McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Jamie Goen (Northwest Region, NMFS), phone: 206–526–4646; fax: 206–526–6736; and e-mail: *jamie.goen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's website at: *www.gpoaccess.gov/fr/index.html*.

Background information and documents are available at the NMFS Northwest Region website at: *www.nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Pacific Fishery Management Council's website at: *www.pcouncil.org*.

Background

The Pacific Coast Groundfish FMP and its implementing regulations at 50 CFR part 660, subpart G, regulate fishing for over 80 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Pacific Council), and are implemented by NMFS. The specifications and management measures for the 2004 fishing year (January 1 - December 31, 2004) were initially published in the **Federal Register** as an emergency rule for January 1 - February 29, 2004 (69 FR 1322, January 8, 2004) and as a proposed rule for March 1 - December 31, 2004 (69 FR 1380, January 8, 2004). The emergency rule was amended at 69 FR 4084, January 28, 2004, and the final rule for March 1 - December 31, 2004 was published in the **Federal Register** on March 9, 2004 (69 FR 11064), and subsequently amended at 69 FR 23440 (April 29, 2004), 69 FR 23667 (April 30, 2004), 69 FR 25013 (May 5, 2004), 69 FR 28086 (May 18, 2004), 69 FR 38857 (June 29, 2004), and at 69 FR 40805 (July 7, 2004). In addition, an emergency rule establishing routine management measure authority, under the Pacific Coast Groundfish FMP, to close the Pacific whiting (whiting) primary season fisheries by sector before the sector's whiting allocation is reached in order to minimize impacts on overfished species was implemented at 69 FR 46448 (August 3, 2004).

The following changes to current groundfish management measures were recommended by the Pacific Council, in consultation with Pacific Coast Treaty Indian Tribes and the states of Washington, Oregon, and California, at its September 12–17, 2004, meeting in San Diego, CA. Pacific Coast groundfish landings will be monitored throughout the year, and further adjustments to trip limits or management measures will be made as necessary to allow achievement of, or to avoid exceeding the 2004 optimum yields (OYs).

In the May inseason action (69 FR 25013, May 5, 2004) NMFS provided additional fishing opportunity for the northern limited entry trawl fleet, which had been severely restricted to reduce the incidental catch of canary rockfish, by reducing the size of the trawl rockfish conservation area (the area closed to fishing for groundfish with trawl gear) or RCA, between the U.S. border with Canada and 40°10′ N. lat. The western, seaward boundary of the trawl RCA was moved from specific latitude and longitude coordinates approximating the 200–fm (366–m) depth contour to specific latitude and longitude coordinates approximating the 150–fm (274–m) depth contour. The reduction in the size of the trawl RCA for the remainder of the year was possible because new observer data indicated that the catch of overfished species, specifically darkblotched rockfish, was lower than predicted in this area. Darkblotched rockfish is a slope species that commonly inhabit waters between approximately 100 fm (183 m) and 220 fm (402 m). Additionally, canary rockfish are most commonly found in waters 50 fm (91 m) to 150 fm (274 m) in depth. Therefore, the reduction in the size of the trawl RCA was not predicted to result in

increased catch of canary rockfish nor was it predicted to cause any overfished groundfish species OY to be exceeded. In addition, after taking into account the updated trawl bycatch model results, which incorporated new observer data and considered the smaller trawl fleet after the trawl buyback, and landed catch data through the end of February 2004, limited entry trawl trip limits for certain deepwater, slope species were increased for the remainder of the year in the May inseason action.

However, at the Pacific Council September 12–17, 2004, meeting, concern that the total mortality of canary and darkblotched rockfish would exceed their 2004 OYs before the end of the year resulted in the Pacific Council recommending inseason adjustments that are intended to drastically reduce the total mortality of these species. For darkblotched rockfish, the landed non-whiting commercial catch of darkblotched rockfish through August was 159.6 mt (161 mt landed catch reported in PacFIN on September 4, 2004, minus 0.7 mt for the shoreside whiting fishery catch minus 0.7 mt for EFP catch). When a discard proportion of 33 percent was applied to the landed catch value, based on the amount of landings and estimated discard in 2003, the estimated total non-whiting commercial catch of darkblotched rockfish through August was 238.2 mt. When the total mortality was projected through the end of the year under existing management measures and when combined with the estimated mortalities in other fisheries, the total mortality estimate for darkblotched rockfish in 2004 was 374 mt. The 2004 OY was set equal to the acceptable biological catch (ABC) of 240 mt; therefore, if no inseason action is taken, the total mortality estimate would be 134 mt over the ABC. This high total mortality estimate is assumed to be partially due to the inseason actions taken in May to reduce the size of the RCA and to increase the minor slope rockfish and splitnose trip limits. In order to reduce additional take over the 2004 ABC/OY of 240 mt to near zero, this document announces inseason actions to revise existing management measures for darkblotched rockfish. The primary action to protect darkblotched rockfish is to extend the seaward boundary of the trawl RCA to eliminate trawling in areas where darkblotched are likely to occur. As an added precaution, the Council recommended decreases in trip limits for species that are known to co-occur with darkblotched. The Council recommended increasing trip limits to allow harvest of more abundant stocks for species and/or in areas which are not expected to increase mortality of darkblotched rockfish. Finally the Council recommended closure of the mothership whiting fishery, and implementation of a bycatch cap on the amount of darkblotched that can be taken by the whiting fishery, as described below. The Council did not recommend changes to the fixed gear and open access non-trawl fisheries or the recreational fishery to protect darkblotched rockfish, because these fisheries have minimal take of darkblotched rockfish.

The total commercial canary rockfish mortality is estimated to be 16.3 mt through August. When the total mortality of canary rockfish was projected through the end of the year under existing management measures and when combined with the estimated mortalities in other fishery sectors, the total mortality of canary rockfish was estimated to be 54.7 mt. Therefore, if no inseason action is taken, the total mortality estimate would be 7.4 mt over the 2004 OY of 47.3 mt. In order to minimize the amount of take over the 2004 OY of 47.3 mt, this document announces inseason actions to revise existing management measures to reduce additional mortality of canary rockfish.

Because of the total mortality projections for darkblotched and canary rockfish, the Pacific Council recommended changes to the trawl rockfish conservation areas (RCAs) coastwide, adjustments to trip limits, non-retention of darkblotched rockfish and canary rockfish in all commercial non-whiting fisheries, and restrictions on Pacific whiting fisheries. These inseason adjustments are expected to reduce the total mortality of darkblotched and canary rockfish, bringing the total mortality of darkblotched rockfish to as close to zero as possible for the remainder of the year and the total mortality of canary rockfish down to keep it within the biological requirements of the rebuilding plan. With the inseason actions described in detail below, the projected total mortality through the end of the year for darkblotched rockfish was reduced by 91.5 mt, but is still projected to be 42.5 mt over the ABC/OY of 240 mt. The projected total mortality through the end of the year for canary rockfish was reduced by 7.1 mt and is projected to be 0.3 mt over the OY of 47.3 mt. [Note: Recreational fisheries take smaller canary rockfish than the commercial fisheries. Therefore, harvest in the recreational fishery results in greater per-ton impact on the canary rockfish stock over the rebuilding period than harvest in the commercial fishery. Therefore, the numerical OY calculated under the rebuilding plan will differ depending on how much harvest is anticipated to be taken in the commercial fishery and how much is anticipated to be taken in the recreational fishery. If the 2004 OY for canary rockfish were recalculated under the rebuilding plan based on the current estimates of recreational and commercial harvest, the canary OY would be approximately 49 mt., rather than the current 47.3 mt. However, NMFS is not revising the OY, but notes that while the fishery is currently projected to exceed the 2004 canary OY by 0.3 mt, the projected harvest is still within the biological parameters of the rebuilding plan. See the preamble to the 2004 specifications and management measures proposed rule for more information, 69 FR 1380, January 8, 2004.]

Trawl RCAs Coastwide

To minimize the commercial catch of darkblotched rockfish for the remainder of the year, the Pacific Council recommended that the seaward trawl RCA boundary move from specific latitude and longitude coordinates approximating the 150–fm (274–m) depth contour to the 250–fm (457–m) depth contour between the U.S./Canada border and 38° N lat. and that the seaward boundary move from specific latitude and longitude coordinates approximating the 150–fm (274–m) depth contour to the 200–fm (366–m) depth contour between 38° N. lat. and 36° N. lat. The seaward boundary will remain at specific latitude and longitude coordinates approximating the 150–fm (274–m) depth contour between 36° N. lat. and the U.S./Mexico border for the remainder of the year. Additionally, the 250–fm (457–m) line North of 38° N. lat. will not include previously scheduled modifications to open petrale fishing areas in Period 6 (November-December). Moving the seaward boundary line of the RCAs in these areas and not allowing access to petrale fishing grounds is expected to reduce any additional mortality of darkblotched rockfish for the remainder of the year to near zero.

To minimize the commercial catch of canary rockfish for the remainder of the year, the Pacific Council recommended that the shoreward trawl RCA boundary be moved to the shoreline coastwide, except for minor exceptions for the open access trawl fleet described below.

By moving the trawl RCA boundary to the shoreline, trawl fishing on the shelf shoreward of the RCA is eliminated,

making differential trip limits for large and small footrope unnecessary for the remainder of 2004. Therefore, the limited entry trawl trip limits described below apply regardless of footrope gear fished.

In addition, California Department of Fish and Game has provided coordinates for the RCA boundary points approximating the 150–fm (274–m) depth contour and the 200–fm (366–m) depth contour at 36° N. lat. These additional coordinates draw the line of the seaward boundary of the RCA at 36° N. lat. from a boundary line approximating the 200–fm (366–m) depth contour to a boundary line approximating the 150–fm (274–m) depth contour in order to protect darkblotched rockfish.

Limited Entry Trawl Trip Limit Adjustments

Retention of darkblotched rockfish and canary rockfish will be prohibited in the limited entry non-whiting trawl fisheries for the remainder of 2004. In addition, the Pacific Council recommended changes to limited entry trawl trip limits intended to provide opportunity to harvest more abundant stocks while minimizing impacts to darkblotched rockfish. As mentioned previously, differential trip limits between small and large footrope have been removed because trawling will be prohibited in the areas shoreward of the trawl RCA, which had lower limits for small footrope. Therefore, all differential trip limits have been either changed or adjusted to match the large footrope limits. [Note: Some trip limits will be increases or decreases implemented mid-cumulative limit period (i.e., October 1 for the September through October cumulative limit period). For trip limits that are increasing mid-cumulative limit period, vessels may land up to the increased amount (i.e., if the limit was previously 15,000 lb (6,804 kg) per 2–month period for September through October and is being raised to 17,000 lb (7,711 kg) per 2–month period beginning October 1, vessels that have already landed 15,000 lb (6,804 kg) before October 1 could take an additional 2,000 lb (907 kg)). Trip limits for the following species will be reductions implemented mid-cumulative limit period (i.e., October 1 for the September through October cumulative limit period). North of 40°10′ N. lat., minor shelf and widow rockfish, yellowtail rockfish and lingcod will be reduced mid-cumulative limit period. South of 40°10′ N. lat., bocaccio and lingcod will be reduced mid-cumulative limit period. For enforcement purposes, if a vessel has already landed the higher cumulative limits for these species between September 1 through 30, that vessel will be in compliance with the regulations, but may not land any additional fish under those limits for the remainder of the cumulative limit period. If a vessel did not land the higher cumulative limits for these species between September 1 through 30 and has an amount remaining to be landed that is less than the lower cumulative trip limits in place beginning October 1, that vessel may land additional fish so that the total caught from September 1 through October 31 does not exceed the reduced cumulative trip limits.]

North of 40°10′ N. lat., trip limits will be changed as follows:

(1) Trip limits for minor slope rockfish for November through December will be decreased from 8,000 lb (3,629 kg) per two-month period to 1,800 lb (816 kg) per 2–month period. This change is intended to reduce the take of darkblotched rockfish which co-occurs with slope species (darkblotched rockfish had previously been included in the minor slope trip limits).

(2) Previously scheduled trip limits for sablefish for September through October were 15,000 lb (6,804 kg) per 2–month period for large footrope and 10,000 lb (4,536 kg) per 2–month period for small footrope. Previously scheduled trip limits for sablefish for November through December were 11,000 lb (4,990 kg) per 2–month period for large footrope and 5,000 lb (2,268 kg) per 2–month period for small footrope. Sablefish trip limits will be increased for October through December to 17,000 lb (7,711 kg) per 2–month period for both large and small footrope combined. This change is intended to allow harvest opportunity on more abundant species in areas where additional mortality of darkblotched rockfish is reduced to near zero.

(3) Previously scheduled trip limits for longspine thornyheads for September through December were 18,000 lb (8,165 kg) per 2–month period for large footrope and 1,000 lb (454 kg) per 2–month period for small footrope. Longspine thornyheads trip limits will be increased for October through December to 18,000 lb (8,165 kg) per 2–month period for both large and small footrope combined. This change is intended to allow harvest opportunity on more abundant species in areas where additional mortality of darkblotched rockfish is reduced to near zero.

(4) Previously scheduled trip limits for shortspine thornyheads for September through October were 4,100 lb (1,860 kg) per 2–month period for large footrope and 3,000 lb (1,361 kg) per 2–month period for small footrope. Previously scheduled trip limits for shortspine thornyheads for November through December were 4,100 lb (1,860 kg) per 2–month period for large footrope and 1,000 lb (454 kg) per 2–month period for small footrope. Shortspine thornyhead trip limits will be increased for October through December to 5,100 lb (2,313 kg) per two month period for both large and small footrope combined. This change is intended to allow harvest opportunity on more abundant species in areas where additional mortality of darkblotched rockfish is reduced to near zero.

(5) Previously scheduled trip limits for Dover sole for September through October were 31,000 lb (14,061 kg) per 2–month period for large footrope and 27,000 lb (12,247 kg) per 2–month period for small footrope. Previously scheduled trip limits for Dover sole for November through December were 50,000 lb (22,680 kg) per 2–month period for large footrope and 18,000 lb (8,165 kg) per 2–month period for small footrope. Dover sole trip limits will be increased for October through December to 40,000 lb (18,144 kg) per 2–month period for both large and small footrope combined. This change is intended to allow harvest opportunity on more abundant species in areas where additional mortality of darkblotched rockfish is reduced to near zero.

(6) Previously scheduled trip limits for all other flatfish and rex sole for large footrope gear during November through December were 100,000 lb (45,359 kg) per 2–month period and for Petrale sole was unlimited. Previously scheduled trip limits for all other flatfish, Petrale sole, and rex sole for small footrope gear during November through December were 70,000 lb (31,752 kg) per 2–month period, no more than 20,000 lb (9,072 kg) of which may be Petrale sole. All other flatfish, Petrale sole, and rex sole trip limits will be changed for November through December to 100,000 lb (45,359 kg) per 2–month period for both large and small footrope combined. This change is intended to reduce potential discard of groundfish that might be associated with flatfish fisheries.

(7) Previously scheduled trip limits for arrowtooth flounder for large footrope gear during November through December was unlimited and for small footrope gear was 8,000 lb (3,629 kg) per 2–month period. Arrowtooth flounder trip limits will be changed for November through December to 100,000 lb (45,359 kg) per two month period for both large and small footrope combined.

This change is intended to reduce potential discard of groundfish that might be associated with flatfish fisheries.

(8) Previously scheduled trip limits for minor shelf rockfish and widow rockfish taken with large footrope gear for October through December were 300 lb (136 kg) per 2–month period. Previously scheduled trip limits for minor shelf rockfish and widow rockfish taken with small footrope gear for September through October were 1,000 lb (454 kg) per month, no more than 200 lb (91 kg) per month of which may be yelloweye rockfish and for November through December were 300 lb (136 kg) per month. Minor shelf rockfish and widow rockfish will be 300 lb (136 kg) per 2–month period for October through December for both small footrope and large footrope combined. This change is intended to make small footrope limits match large footrope limits since nearshore small footrope opportunities will no longer be available.

(9) Trip limits for canary rockfish with small footrope gear for October through December were 100 lb (45 kg) per month and will now be closed. This change is intended to make small footrope limits match large footrope limits since nearshore small footrope opportunities will no longer be available.

(10) Previously scheduled trip limits for yellowtail rockfish with small footrope gear for October through December were, ''In landings without flatfish, 1,000 lb (454 kg) per month. As flatfish bycatch, per trip limit is the sum of 33 percent (by weight) of all flatfish except arrowtooth flounder, plus 10 percent (by weight) of arrowtooth flounder. Total yellowtail landings not to exceed 10,000 lb (4,536 kg) per 2–month period, no more than 1,000 lb (454 kg) per month of which may be landed without flatfish.'' This trip limit will now be closed for October through December. This change is intended to make small footrope limits match large footrope limits since nearshore small footrope opportunities will no longer be available.

(11) Trip limits for minor nearshore rockfish with small footrope gear for October through December were 300 lb (136 kg) per month and will now be closed. This change is intended to make small footrope limits match large footrope limits since nearshore small footrope opportunities will no longer be available.

(12) Previously scheduled trip limits for lingcod with large footrope gear was 500 lb (227 kg) per 2–month period for September through December and with small footrope gear was 800 lb (363 kg) per 2–month period. Lingcod trip limits for large and small footrope combined will be 500 lb (227 kg) per 2–month period for October through December. This change is intended to make small footrope limits match large footrope limits since nearshore small footrope opportunities will no longer be available.

South of 40°10′ N. lat., trip limits will be changed as follows:

(1) Trip limits for minor slope rockfish for November through December between 40°10′ N. lat and 38° N. lat. will be decreased from 50,000 lb (22,680 kg) per 2–month period to 10,000 lb (4,536 kg) per 2–month period. Trip limits for minor slope rockfish south of 38° N. lat. will remain at 50,000 lb (22,680 kg) per 2–month period. This change is intended to reduce the take of darkblotched rockfish which co-occurs with slope species (darkblotched rockfish had previously been included in the minor slope trip limits).

(2) Trip limits for splitnose for November through December between 40°10′ N. lat and 38° N. lat. will be decreased from 50,000 lb (22,680 kg) per two month period to 10,000 lb (4,536 kg) per 2–month period. Trip limits for splitnose south of 38° N. lat. will remain at 50,000 lb (22,680 kg) per 2–month period. This change is intended to reduce the take of darkblotched rockfish which co-occurs with splitnose.

(3) Sablefish trip limits will be increased for October through December from 13,000 lb (5,897 kg) per 2–month period to 17,000 lb (7,711 kg) per 2–month period. This change is intended to allow harvest opportunity on more abundant species in areas where additional mortality of darkblotched rockfish is reduced to near zero.

(4) Shortspine thornyhead trip limits will be increased for October through December from 4,100 lb (1,860 kg) per 2–month period to 5,100 lb (2,313 kg) per 2–month period. This change is intended to allow harvest opportunity on more abundant species in areas where additional mortality of darkblotched rockfish is reduced to near zero.

(5) Dover sole trip limits will be decreased for November through December from 49,000 lb (22,226 kg) per 2–month period to 48,000 lb (21,772 kg) per 2–month period. This change is intended to reflect the harvest ratios of DTS (Dover sole, thornyheads, sablefish) complex species and to allow harvest opportunity on more abundant DTS species in areas where additional mortality of darkblotched rockfish is reduced to near zero

(6) Previously scheduled trip limits for all other flatfish and rex sole during November through December were 120,000 lb (54,431 kg) per two month period and for Petrale sole was unlimited. All other flatfish, Petrale sole, and rex sole trip limits will be decreased for November through December to 120,000 lb (54,431 kg) per two month period, no more than 100,000 lb (45,359 kg) per two month period of which may be Petrale sole. This change is intended to reduce potential discard of groundfish that might be associated with flatfish fisheries.

(7) Arrowtooth flounder trip limits will be decreased for November through December from unlimited to 100,000 lb (45,359 kg) per 2–month period. This change is intended to reduce potential discard of groundfish that might be associated with flatfish fisheries.

(8) Previously scheduled trip limits for minor shelf rockfish, widow rockfish, and chilipepper rockfish with small footrope gear for October through December was 1,000 lb (454 kg) per month, no more than 200 lb (91 kg) per month of which may be minor shelf and widow rockfish. Minor shelf rockfish will be a combined midwater, small and large footrope limit of 300 lb (136 kg) per month (equivalent to the previous large and midwater trip limit). Chilipepper rockfish will be a combined midwater, small and large footrope limit of 8,000 lb (3,629 kg) per 2–month (equivalent to the previous large and midwater trip limit) and widow rockfish will be closed for all trawl gear. This change is intended to make small footrope limits match large footrope limits since nearshore small footrope opportunities will no longer be available.

(9) Previously scheduled trip limits for bocaccio for October through November using large footrope gear was 300 lb (136 kg) per 2–month period and using small footrope gear was closed. Trip limits for bocaccio for October through December will now be 300 lb (136 kg) per 2–month period for both large and small footrope combined. This change is intended to make small footrope limits match large footrope limits since nearshore small footrope opportunities will no longer be available.

(10) Trip limits for canary rockfish with small footrope gear for October through December were 100 lb (45 kg) per month and will now be closed. This change is intended to make small footrope limits match large footrope limits since nearshore small footrope opportunities will no longer be available.

(11) Trip limits for minor nearshore rockfish with small footrope gear for October through December were 300 lb (136 kg) per month and will now be closed. This change is intended to make small footrope limits match large footrope limits since nearshore small footrope opportunities will no longer be available.

(12) Previously scheduled trip limits for lingcod with large footrope gear was 500 lb (227 kg) per 2–month period for September through December and with small footrope gear was 800 lb (363 kg) per two month period. Lingcod trip limits for large and small footrope combined will be 500 lb (227 kg) per 2–month period for October through December. This change is intended to make small footrope limits match large footrope limits since nearshore small footrope opportunities will no longer be available.

Limited Entry Trawl Pacific Whiting Fishery

At its June meeting, in response to the elevated catches of canary rockfish in the whiting fishery, the Council requested that NMFS implement an emergency rule that allows appropriate sectors of the commercial whiting fishery to be closed if the canary rockfish impacts reach 7.3 mt. Regulations at 50 CFR 660.323 (b)(ii) were revised on August 3, 2004 (69 FR 46448) by an emergency rule that established routine management measure authority to close the whiting primary season fisheries by sector before the sector's whiting allocation is reached, to minimize impacts on overfished species. This regulatory mechanism can be used to quickly close the commercial whiting primary season fisheries if NMFS estimates that the incidental catch of an overfished species is too high.

Initially, the Council requested that NMFS close the appropriate sectors of the commercial whiting fishery if the canary rockfish impacts reach 7.3 mt. However, at their September meeting, concerns about the total catch of canary and darkblotched rockfish by all commercial sectors resulted in the Council recommending that the mothership sector of the fishery, which has already stopped fishing, be closed on October 1, 2004. In addition, if the total catch in all whiting fisheries reaches 6.2 mt of canary rockfish or 9.5 mt of darkblotched rockfish, the Council recommended that the catcher processor sector be closed. The shore-based sector was closed on August 14, 2004.

At the Pacific Council's September meeting, the Council initially considered recommending a closure of all whiting fisheries or moving the fishery outside of 250 fathoms, effective October 1, 2004, in order to protect darkblotched rockfish. While the mothership sector was not expected to continue fishing in September, the catcher-processor sector would continue to fish. Recommending a full or partial closure on October 1, 2004, would create an incentive to catch the remaining whiting allocation as fast as possible with little or no concern over the additional canary or darkblotched rockfish taken. The representatives of the catcher-processor sector asked the Council to institute a bycatch cap, rather than to close the fishery. They proposed the cap be the total amount projected to be harvested by the fleet by October 1, 2004, the planned date of the closure. They believe they can control the fishery to avoid reaching the cap which would allow them to take their allocation without increasing the harvest of darkblotched above what was projected to be taken by October 1, 2004. The catcher-processor sector of this fishery has two observers on each vessel, and provides real-time data to NMFS. Therefore, the bycatch cap in this fishery is possible. Implementing bycatch caps in a fishery that is monitored and has real time data creates an incentive to fish carefully and in areas where they won't take species of concern. Thus, while this fishery will be open longer than it would have been had it been closed on October 1, 2004, this action is not projected to result in additional mortality to darkblotched rockfish above what was anticipated by October 1, 2004.

NMFS plans to use the regulatory authority at 50 CFR 660.323 (b)(1)(ii), if appropriate, to close the primary whiting fisheries through a routine management measure as recommended by the Council. That is, if NMFS estimates, using the best available data, that 6.2 mt of canary rockfish or 9.5 mt of darkblotched rockfish have been taken in the 2004 whiting fisheries, NMFS will take inseason action and publish a **Federal Register** document to close the catcher-processor sector of the whiting fishery.

Industry representatives attending the September meeting pledged to avoid areas known for bycatch of canary and darkblotched rockfish and to monitor and voluntarily close the fishery if any of these catch limits were reached. Additionally, the Pacific Council requested that the Pacific whiting fishery voluntarily remain in areas deeper than 150 fathoms to minimize interactions with canary rockfish.

Limited Entry Fixed Gear Trip Limit Adjustments

The Pacific Council recommended changes to the limited entry fixed gear trip limits. Retention of darkblotched rockfish is prohibited in the limited entry fixed gear fisheries for the remainder of 2004. North of 40°10′ N latitude, beginning November 1, 2004, the trip limit for shortspine thornyheads will be reduced from 2,100 lb (953 kg) per 2–month period to 2,000 lb (907 kg) per 2–month period. This change is intended to make trip limits North of 40°10′ N. lat. match limits south of 40°10′ N. lat. for ease of enforcement and to reduce regulatory complexity. Between 40°10′ N. lat. and 38° N. lat., beginning November 1, 2004, the trip limits for both minor slope rockfish and splitnose rockfish will be reduced from 50,000 lb (22,680 kg) per 2–month period to 10,000 lb (4,536 kg) per 2–month period. South of 38° N. lat., the trip limits for both minor slope rockfish and splitnose rockfish will remain at 50,000 lb (22,680 kg) per 2–month period. This change is intended to reduce the take of darkblotched rockfish in areas where it co-occurs with slope species and where it had been included in the minor slope trip limits.

Open Access Non-Retention and Trawl RCA

Retention of darkblotched rockfish is prohibited in the open access fisheries for the remainder of 2004. Due to low estimated impacts to canary rockfish and darkblotched rockfish, the Pacific Council recommended that exempted trawl fisheries in the open access sector which target sea cucumbers, California halibut, and ridgeback prawns continue to have access to nearshore areas as follows. Between 40°10′ N. lat. and 34°27′ N. lat., allow sea cucumber and California halibut trawl fisheries shoreward of an RCA boundary approximating the 30–fm (55–m) depth contour beginning October 1. Ridgeback prawn will be subject to the trawl RCA restrictions in this area, which will be closed to the shoreline between 40°10′ N. lat. and 34°27′ N. lat. Between 34°27′ N. lat. and the U.S./Mexico border, allow exempted trawl fisheries for sea cucumbers, California halibut, and ridgeback prawns shoreward of an RCA boundary approximating the 75–fm (137–m) depth contour as previously scheduled. In addition, the Pacific Council recommended no retention of rockfish in these fisheries for the remainder of the year in order to eliminate any incentive to target nearshore rockfish species which might increase mortality of canary rockfish.

These depth and landing restrictions are intended to minimize additional mortality of canary and darkblotched rockfish by constraining the fishery to areas with low abundance of these species.

Oregon Recreational Fishery Adjustments

Oregon Department of Fish and Wildlife (ODFW) manages their recreational groundfish fisheries with ''harvest caps'' for black rockfish, blue rockfish, nearshore rockfish, cabezon and greenling. Harvest caps are defined as the total catch for a given species, or species group, that may be taken in a single calendar year by the ocean boat fishery. Effective August 18, 2004, the cabezon harvest cap of 15.8 mt was projected to be reached and retention of cabezon was prohibited. Effective September 3, 2004, the greenling and rockfish harvest caps (5.2 mt for greenling, 11.2 mt for nearshore rockfish and 382.5 mt for black and blue rockfish) were projected to be reached and retention of all rockfish, lingcod, and greenling were prohibited. In an effort to allow some recreational fisheries with minimal impact to canary rockfish to operate, ODFW is allowing retention of yellowtail rockfish taken seaward of a boundary line approximating the 40–fm (73–m) depth contour from October 1 through October 31, 2004. In addition, there will be continued access off Oregon for sablefish, flatfish and any groundfish not currently prohibited by state law in the area inside of a boundary line approximating the 40–fm (73–m) depth contour for the remainder of the year and both inside and outside of this same area through October 31, 2004. As recommended by the Pacific Council, NMFS will adjust Federal recreational groundfish regulations off Oregon to conform with ODFW regulations.

NMFS Actions

For the reasons stated herein, NMFS concurs with the Pacific Council's recommendations and hereby announces the following changes to the 2004 specifications and management measures (69 FR 11064, March 9, 2004), as amended at 69 FR 23440 (April 29, 2004), 69 FR 23667 (April 30, 2004), 69 FR 25013 (May 5, 2004), 69 FR 28086 (May 18, 2004), 69 FR 38857 (June 29, 2004), and at 69 FR 40805 (July 7, 2004), to read as follows:

1. On pages 11099–11100, in section IV. NMFS Actions, under A. General Definitions and Provisions, paragraph (17)(ix) is revised to read as follows:

* * * * *

(223) 36°00.00′ N. lat., 121°35.15′ W. long.;
(224) 35°57.74′ N. lat., 121°33.45′ W. long.;
(225) 35°51.32′ N. lat., 121°30.08′ W. long.;
(226) 35°45.84′ N. lat., 121°28.84′ W. long.;
(227) 35°38.94′ N. lat., 121°23.16′ W. long.;
(228) 35°26.00′ N. lat., 121°08.00′ W. long.;
(229) 35°07.42′ N. lat., 120°57.08′ W. long.;
(230) 34°42.76′ N. lat., 120°55.09′ W. long.;
(231) 34°37.75′ N. lat., 120°51.96′ W. long.;
(232) 34°29.29′ N. lat., 120°44.19′ W. long.;
(233) 34°27.00′ N. lat., 120°40.42′ W. long.;
(234) 34°21.89′ N. lat., 120°31.36′ W. long.;
(235) 34°20.79′ N. lat., 120°21.58′ W. long.;
(236) 34°23.97′ N. lat., 120°15.25′ W. long.;
(237) 34°22.11′ N. lat., 119°56.63′ W. long.;
(238) 34°19.00′ N. lat., 119°48.00′ W. long.;
(239) 34°15.00′ N. lat., 119°48.00′ W. long.;
(240) 34°08.00′ N. lat., 119°37.00′ W. long.;
(241) 34°08.39′ N. lat., 119°54.78′ W. long.;
(242) 34°07.10′ N. lat., 120°10.37′ W. long.;
(243) 34°10.08′ N. lat., 120°22.98′ W. long.;
(244) 34°13.16′ N. lat., 120°29.40′ W. long.;
(245) 34°09.41′ N. lat., 120°37.75′ W. long.;
(246) 34°03.15′ N. lat., 120°34.71′ W. long.;
(247) 33°57.09′ N. lat., 120°27.76′ W. long.;
(248) 33°51.00′ N. lat., 120°09.00′ W. long.;
(249) 33°38.16′ N. lat., 119°59.23′ W. long.;
(250) 33°37.04′ N. lat., 119°50.17′ W. long.;
(251) 33°42.28′ N. lat., 119°48.85′ W. long.;
(252) 33°53.96′ N. lat., 119°53.77′ W. long.;
(253) 33°59.94′ N. lat., 119°19.57′ W. long.;
(254) 34°03.12′ N. lat., 119°15.51′ W. long.;
(255) 34°01.97′ N. lat., 119°07.28′ W. long.;
(256) 34°03.60′ N. lat., 119°04.71′ W. long.;
(257) 33°59.30′ N. lat., 119°03.73′ W. long.;
(258) 33°58.87′ N. lat., 118°59.37′ W. long.;
(259) 33°58.08′ N. lat., 118°41.14′ W. long.;
(260) 33°50.93′ N. lat., 118°37.65′ W. long.;
(261) 33°39.54′ N. lat., 118°18.70′ W. long.;
(262) 33°35.42′ N. lat., 118°17.14′ W. long.;
(263) 33°32.15′ N. lat., 118°10.84′ W. long.;
(264) 33°33.71′ N. lat., 117°53.72′ W. long.;
(265) 33°31.17′ N. lat., 117°49.11′ W. long.;
(266) 33°16.53′ N. lat., 117°36.13′ W. long.;
(267) 33°06.77′ N. lat., 117°22.92′ W. long.;
(268) 32°58.94′ N. lat., 117°20.05′ W. long.;
(269) 32°55.83′ N. lat., 117°20.15′ W. long.;
(270) 32°46.29′ N. lat., 117°23.89′ W. long.;
(271) 32°42.00′ N. lat., 117°22.16′ W. long.;
(272) 32°39.47′ N. lat., 117°27.78′ W. long.; and
(273) 32°34.83′ N. lat., 117°24.69′ W. long.

* * * * *

2. On pages 11102–11103, in section IV. NMFS Actions, under A. General Definitions and Provisions, paragraph (17)(xi) is revised to read as follows:

* * * * *

(210) 36°00.00′ N. lat., 121°36.95′ W. long.;
(211) 35°57.07′ N. lat., 121°34.32′ W. long.;
(212) 35°52.31′ N. lat., 121°32.45′ W. long.;
(213) 35°51.21′ N. lat., 121°30.91′ W. long.;
(214) 35°46.32′ N. lat., 121°30.30′ W. long.;
(215) 35°33.74′ N. lat., 121°20.10′ W. long.;
(216) 35°31.37′ N. lat., 121°15.23′ W. long.;
(217) 35°23.32′ N. lat., 121°11.44′ W. long.;
(218) 35°15.28′ N. lat., 121°04.45′ W. long.;
(219) 35°07.08′ N. lat., 121°00.30′ W. long.;
(220) 34°57.46′ N. lat., 120°58.23′ W. long.;
(221) 34°44.25′ N. lat., 120°58.29′ W. long.;
(222) 34°32.30′ N. lat., 120°50.22′ W. long.;
(223) 34°27.00′ N. lat., 120°42.55′ W. long.;
(224) 34°19.08′ N. lat., 120°31.21′ W. long.;

(225) 34°17.72′ N. lat., 120°19.26′ W. long.;

(226) 34°22.45′ N. lat., 120°12.81′ W. long.;

(227) 34°21.36′ N. lat., 119°54.88′ W. long.;

(228) 34°09.95′ N. lat., 119°46.18′ W. long.;

(229) 34°09.08′ N. lat., 119°57.53′ W. long.;

(230) 34°07.53′ N. lat., 120°06.35′ W. long.;

(231) 34°10.54′ N. lat., 120°19.07′ W. long.;

(232) 34°14.68′ N. lat., 120°29.48′ W. long.;

(233) 34°09.51′ N. lat., 120°38.32′ W. long.;

(234) 34°03.06′ N. lat., 120°35.54′ W. long.;

(235) 33°56.39′ N. lat., 120°28.47′ W. long.;

(236) 33°50.25′ N. lat., 120°09.43′ W. long.;

(237) 33°37.96′ N. lat., 120°00.08′ W. long.;

(238) 33°34.52′ N. lat., 119°51.84′ W. long.;

(239) 33°35.51′ N. lat., 119°48.49′ W. long.;

(240) 33°42.76′ N. lat., 119°47.77′ W. long.;

(241) 33°53.62′ N. lat., 119°53.28′ W. long.;

(242) 33°57.61′ N. lat., 119°31.26′ W. long.;

(243) 33°56.34′ N. lat., 119°26.40′ W. long.;

(244) 33°57.79′ N. lat., 119°26.85′ W. long.;

(245) 33°58.88′ N. lat., 119°20.06′ W. long.;

(246) 34°02.65′ N. lat., 119°15.11′ W. long.;

(247) 33°59.02′ N. lat., 119°02.99′ W. long.;

(248) 33°57.61′ N. lat., 118°42.07′ W. long.;

(249) 33°50.76′ N. lat., 118°37.98′ W. long.;

(250) 33°38.41′ N. lat., 118°17.03′ W. long.;

(251) 33°37.14′ N. lat., 118°18.39′ W. long.;

(252) 33°35.51′ N. lat., 118°18.03′ W. long.;

(253) 33°30.68′ N. lat., 118°10.35′ W. long.;

(254) 33°32.49′ N. lat., 117°51.85′ W. long.;

(255) 32°58.87′ N. lat., 117°20.36′ W. long.; and

(256) 32°35.53′ N. lat., 117°29.67′ W. long.

3. On pages 11108–11114, in section IV. NMFS Actions, under B. Limited Entry Fishery, at the end of paragraph (1), Table 3 (North), Table 3 (South), Table 4 (North), and Table 4 (South) are revised to read as follows:

IV. NMFS Actions

B. Limited Entry Fishery

(1) * * *

* * * * *

BILLING CODE 3510–22–S

Table 3 (North). 2004 Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear North of 40°10' N. Latitude[2/]

Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table 092004

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[10/] (RCA): North of 40°10' N. lat.	75 fm - modified 200 fm [11/]	60 fm - 200 fm	60 fm - 150 fm	75 fm - 150 fm		shoreline - 250 fm
	Small footrope or midwater trawl gear is required shoreward of the RCA; all trawl gear (large footrope, midwater trawl, and small footrope gear) is permitted seaward of the RCA.						
	A vessel may have more than one type of limited entry bottom trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear. A vessel that is trawling within the RCA (or other closed area) with trawl gear authorized for use within the RCA (or other closed area) may not have any other type of trawl gear on board. North of 40°10 N. lat., midwater trawl gear is permissible only for vessels participating in the primary whiting season. On non-whiting trips, vessels with both large footrope and midwater trawl gear on board during a trip may land the large footrope limits while fishing with large footrope gear seaward of the RCA. Crossover provisions apply. **See IV.A.(14)(b)(iv) and IV.B.(3)(c) for details.**						
	Beginning October 1, 2004, retention of darkblotched and canary rockfish prohibited.						
1	**Minor slope rockfish[3/]**	4,000 lb/ 2 months		8,000 lb/ 2 months			1,800 lb/ 2 months
2	**Pacific ocean perch**	3,000 lb/ 2 months					
3	**DTS complex**	Providing only large footrope gear is used to land any groundfish species during the entire limit period, then large footrope trawl trip limits apply. If small footrope gear[7/] is used at any time north of 40°10' N. lat. (shoreward or seaward of RCA) during the entire limit period, then small footrope trawl limits apply.					
4	Sablefish						
5	large footrope gear	9,300 lb/ 2 months		16,000 lb/ 2 months	15,000 lb/ 2 months	17,000 lb/ 2 months	
6	small footrope gear[7/]	2,000 lb/ 2 months		10,000 lb/ 2 months			
7	Longspine thornyhead						
8	large footrope gear	15,000 lb/ 2 months		18,000 lb/ 2 months		18,000 lb/ 2 months	
9	small footrope gear[7/]	1,000 lb/ 2 months					
10	Shortspine thornyhead						
11	large footrope gear	3,150 lb/ 2 months		4,500 lb/ 2 months	4,100 lb/ 2 months	5,100 lb/ 2 months	
12	small footrope gear[7/]	1,000 lb/ 2 months		3,000 lb/ 2 months			
13	Dover sole						
14	large footrope gear	67,500 lb/ 2 months		32,000 lb/ 2 months	31,000 lb/ 2 months	40,000 lb/ 2 months	
15	small footrope gear[7/]	10,000 lb/ 2 months		27,000 lb/ 2 months			
16	**Flatfish**	Providing only large footrope gear is used to land any groundfish species during the entire limit period, then large footrope trawl trip limits apply. If small footrope gear[7/] is used at any time north of 40°10' N. lat. (shoreward or seaward of RCA) during the entire limit period, then small footrope trawl limits apply.					
17	All other flatfish, Petrale sole, & Rex sole						
18	large footrope gear for All other flatfish[4/] & Rex sole	100,000 lb/ 2 months			All other flatfish, rex sole, and petrale sole: 100,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole.		All other flatfish, rex sole, and petrale sole: 100,000 lb/ 2 months
19	large footrope gear for Petrale sole	Not limited	100,000 lb/ 2 months				
20	small footrope gear[7/]	30,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.		80,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole.	80,000 lb/ 2 months, no more than 26,000 lb/ 2 months of which may be petrale sole.		

Table 3 (North). Continued

21	Arrowtooth flounder				
22	large footrope gear	Not limited	150,000 lb/ 2 months		100,000 lb/ 2 months
23	small footrope gear[7/]	4,000 lb/ 2 months	11,000 lb/ 2 months		
24	**Whiting[5/]**	Before the primary whiting season: 20,000 lb/trip -- During the primary season: mid-water trawl permitted in the RCA. See IV.B.(3)(b) for season and trip limit details. -- After the primary whiting season: 10,000 lb/trip			
25	**Minor shelf rockfish[3/] & Widow rockfish**				
26	midwater trawl for Widow rockfish	Before the primary whiting season: CLOSED[6/] -- During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See IV.B.(3)(b) for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED[6/]			
27	large footrope trawl	CLOSED[6/]		300 lb/ 2 months	300 lb/ 2 months
28	small footrope trawl[7/] for minor shelf & widow	300 lb/ month	1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish		
29	**Canary rockfish**				
30	large footrope trawl	CLOSED[6/]			
31	small footrope trawl[7/]	100 lb/ month	300 lb/ month	100 lb/ month	CLOSED[6/]
32	**Yellowtail**				
33	large footrope trawl	CLOSED[6/]			
34	midwater trawl	Before the primary whiting season: CLOSED[6/] -- During primary whiting season: In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See IV.B.(3)(b) for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED[6/]			
35	small footrope trawl[7/]	In landings without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder. Total yellowtail landings not to exceed 10,000 lb/ 2 months, no more than 1,000 lb/ month of which may be landed without flatfish.			CLOSED[6/]
36	**Minor nearshore rockfish**				
37	large footrope trawl	CLOSED[6/]			
38	small footrope trawl[7/]	300 lb/ month			CLOSED[6/]
39	**Lingcod[8/]**				
40	large footrope trawl	CLOSED[6/]		500 lb/ 2 months	500 lb/ 2 months
41	small footrope trawl[7/]	800 lb/ 2 months	1,000 lb/ 2 months	800 lb/ 2 months	
42	**Other Fish[9/]**	Not limited			

1/ Gear requirements and prohibitions are explained above. See IV. A.(14).
2/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.
3/ Bocaccio and chilipepper are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.
4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.
5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip all year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).
6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).
7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.
8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.
10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at IV. A.(17)(f), that may vary seasonally.
11/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South). 2004 Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear South of 40°10' N. Latitude[2/]

Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table 092004

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area[10/] (RCA):						
40°10' - 38° N. lat.	75 fm - 150 fm (additional closure between the shoreline and 10 fm around the Farallon Islands)		100 fm - 150 fm (additional closure between the shoreline and 10 fm around the Farallon Islands)		75 fm - 150 fm (additional closure between the shoreline and 10 fm around the Farallon Islands)	shoreline - 250 fm
38° - 36° N. lat.						shoreline - 200 fm (additional closure between the shoreline and 10 fm around the Farallon Islands)
36° - 34°27' N. lat.						shoreline - 150 fm along mainland coast and around islands
South of 34°27' N. lat.	75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands		100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands		75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands	

Small footrope gear is required shoreward of the RCA; all trawl gear (large footrope, midwater trawl, and small footrope gear) is permitted seaward of the RCA.

A vessel may have more than one type of limited entry bottom trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for that trip. For vessels using more than one type of trawl gear during a cumulative limit period, limits are additive up to the largest limit for the type of gear used during that period. See [11/] for example. A vessel that is trawling within the RCA (or other closed area) with trawl gear authorized for use within the RCA (or other closed area) may not have any other type of trawl gear on board. Crossover provisions apply. **See IV.A.(14)(b)(iv) and IV.B.(3)(c) for details.**

Beginning October 1, 2004, retention of darkblotched and canary rockfish prohibited.

1	**Minor slope rockfish[3/]**					
2	40°10' - 38° N. lat.	7,000 lb/ 2 months	50,000 lb/ 2 months			10,000 lb/ 2 months
3	South of 38° N. lat.	40,000 lb/ 2 months				50,000 lb/ 2 months
4	**Splitnose**					
5	40°10' - 38° N. lat.	7,000 lb/ 2 months	50,000 lb/ 2 months			10,000 lb/ 2 months
6	South of 38° N. lat.	40,000 lb/ 2 months				50,000 lb/ 2 months
7	**DTS complex**	If fishing north of 40°10' N. lat. at any time with small footrope gear during the cumulative limit period , differential trip limits based on footrope size will apply during the entire limit period. See Table 3 (North) and Section A. (12) for more details				
8	Sablefish	11,250 lb/ 2 months	14,500 lb/ 2 months	13,000 lb/ 2 months	17,000 lb/ 2 months	
9	Longspine thornyhead	15,000 lb / 2 months	18,000 lb / 2 months			
10	Shortspine thornyhead	3,000 lb/ 2 months	4,500 lb/ 2 months	4,100 lb/ 2 months	5,100 lb/ 2 months	
11	Dover sole	39,000 lb/ 2 months	49,000 lb/ 2 months	48,000 lb/ 2 months		
12	**Flatfish**	If fishing north of 40°10' N. lat. at any time with small footrope gear during the cumulative limit period, differential trip limits based on footrope size will apply during the entire limit period. See Table 3 (North) and Section A. (12) for more details				
13	All other flatfish[4/] & Rex sole	100,000 lb/ 2 months	All other flatfish plus petrale & rex sole: 100,000 lb/ 2 months, no more than 20,000 lb/ 2 months of which may be petrale sole	All other flatfish plus petrale & rex sole: 120,000 lb/ 2 months, no more than 20,000 lb/ 2 months of which may be petrale sole		All other flatfish plus petrale & rex sole: 120,000 lb/ 2 months, no more than 100,000 lb/ 2 months of which may be petrale sole
14	Petrale sole	No limit				
15	Arrowtooth flounder	No limit	10,000 lb/ 2 months			100,000 lb/ 2 months

Table 3 (South). Continued

16	**Whiting**[5/]	Before the primary whiting season: 20,000 lb/trip -- During the primary whiting season: mid-water trawl permitted in the RCA. See IV.B.(3)(b) for season and trip limit details. -- After the primary whiting season: 10,000 lb/trip			
17	**Minor shelf rockfish, Widow, and Chilipepper rockfish**[3/]				
18	large footrope or midwater trawl for Minor shelf rockfish	300 lb/ month			
19	large footrope or midwater trawl for Chilipepper rockfish	2,000 lb/ 2 months	12,000 lb/ 2 months	8,000 lb/ 2 months	
20	large footrope or midwater trawl for Widow rockfish	CLOSED[6/]			
21	small footrope trawl[7/] for minor shelf	300 lb/ month	1,000 lb/ month, no more than 200 lb/month of which may be minor shelf and widow rockfish		Combined small footrope, midwater, and large footrope limit. See large footrope limit for minor shelf.
22	small footrope trawl[7/] for chilipepper				Combined small footrope, midwater, and large footrope limit. See large footrope limit for chilipepper.
23	small footrope trawl[7/] for widow				CLOSED[6/]
24	**Bocaccio**				
25	large footrope or midwater trawl	100 lb/ month	300 lb/ 2 months		300 lb/ 2 months
26	small footrope trawl[7/]	CLOSED[6/]			
27	**Canary rockfish**				
28	large footrope or midwater trawl	CLOSED[6/]			
29	small footrope trawl[7/]	100 lb/ month	300 lb/ month	100 lb/ month	CLOSED[6/]
30	**Cowcod**	CLOSED[6/]			
31	**Minor nearshore rockfish**				
32	large footrope or midwater trawl	CLOSED[6/]			
33	small footrope trawl[7/]	300 lb/ month			CLOSED[6/]
34	**Lingcod**[8/]				
35	large footrope or midwater trawl	CLOSED6/	500 lb/ 2 months		500 lb/ 2 months
36	small footrope trawl[7/]	800 lb/ 2 months	1,000 lb/ 2 months	800 lb/ 2 months	
37	**Other Fish**[9/]	Not limited			

1/ Gear requirements and prohibitions are explained above. See IV. A.(14).
2/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.
3/ Yellowtail is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.
4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.
5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip all year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).
6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).
7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.
8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.
10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat./long. coordinates set out at IV. A.(17)(f), that may vary seasonally.
11/ Example: If a vessel harvests 800 lb of chilipepper rockfish with small footrope gear, it may harvest up to 11,200 lb of chilipepper rockfish with large footrope gear during July and August.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (North). 2004 Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table 092004

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[8/] (RCA):						
	North of 46°16' N. lat.	shoreline - 100 fm					
	46°16' N. lat. - 40°10' N. lat.	30 fm - 100 fm					
	Beginning October 1, 2004, retention of darkblotched rockfish prohibited.						
1	**Minor slope rockfish[4/]**	4,000 lb/ 2 months					
2	**Pacific ocean perch**	1,800 lb/ 2 months					
3	**Sablefish**	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months					
4	**Longspine thornyhead**	10,000 lb/ 2 months					
5	**Shortspine thornyhead**	2,100 lb/ 2 months					2,000 lb/ 2 months
6	**Dover sole**	5,000 lb/ month					
7	**Arrowtooth flounder**						
8	**Petrale sole**						
9	**Rex sole**						
10	**All other flatfish[2/]**						
11	**Whiting[3/]**	10,000 lb/ trip					
12	**Minor shelf rockfish, widow, and yellowtail rockfish[4/]**	200 lb/ month					
13	**Canary rockfish**	CLOSED[5/]					
14	**Yelloweye rockfish**	CLOSED[5/]					
15	**Minor nearshore rockfish**	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[6/]					
16	**Lingcod[7/]**	CLOSED[5/]		400 lb/ month			CLOSED[5/]
17	**Other fish[9/]**	Not limited					

1/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.
2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.
3/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip all year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).
4/ Bocaccio and chilipepper are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.
5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).
6/ For black rockfish north of Cape Alava (48°09'30" N. lat.), and between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
7/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
8/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat./long. coordinates set out at IV. A.(17)(f), that may vary seasonally.
9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (South). 2004 Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table 092004

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[7/] (RCA):						
	40°10' - 34°27' N. lat.	30 fm - 150 fm (also applies around islands, there is an additional closure between the shoreline and 10 fm around the Farallon Islands)		20 fm - 150 fm (also applies around islands, there is an additional closure between the shoreline and 10 fm around the Farallon Islands)		30 fm - 150 fm (also applies around islands, there is an additional closure between the shoreline and 10 fm around the Farallon Islands)	
	South of 34°27' N. lat.	60 fm - 150 fm (also applies around islands)					
	Beginning October 1, 2004, retention of darkblotched rockfish prohibited.						
1	**Minor slope rockfish[4/]**						
2	40°10' - 38° N. lat.	7,000 lb/ 2 months		50,000 lb/ 2 months			10,000 lb/ 2 months
3	South of 38° N. lat.	40,000 lb/ 2 months					50,000 lb/ 2 months
4	**Splitnose**						
5	40°10' - 38° N. lat.	7,000 lb/ 2 months		50,000 lb/ 2 months			10,000 lb/ 2 months
6	South of 38° N. lat.	40,000 lb/ 2 months					50,000 lb/ 2 months
7	**Sablefish**						
8	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months					
9	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
10	**Longspine thornyhead**	10,000 lb/ 2 months					
11	**Shortspine thornyhead**	2,000 lb/ 2 months					
12	**Dover sole**	5,000 lb/ month When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs.					
13	**Arrowtooth flounder**						
14	**Petrale sole**						
15	**Rex sole**						
16	**All other flatfish[2/]**						
17	**Whiting[3/]**	10,000 lb/ trip					
18	**Minor shelf rockfish, widow, and yellowtail rockfish[4/]**						
19	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED[5/]	200 lb/ 2 months		300 lb/ 2 months	
20	South of 34°27' N. lat.	CLOSED[5/]	2,000 lb/ 2 months				
21	**Chilipepper rockfish**	2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA					
22	**Canary rockfish**	CLOSED[5/]					
23	**Yelloweye rockfish**	CLOSED[5/]					
24	**Cowcod**	CLOSED[5/]					
25	**Bocaccio**						
26	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED[5/]	100 lb/ 2 months	300 lb/ 2 months		
27	South of 34°27' N. lat.	CLOSED[5/]	300 lb/ 2 months				
28	**Minor nearshore rockfish**						
29	Shallow nearshore						
30	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED[5/]	500 lb/ 2 months	600 lb/ 2 months	500 lb/ 2 months	300 lb/ 2 months
31	South of 34°27' N. lat.	CLOSED[5/]	300 lb/ 2 months				
32	Deeper nearshore						
33	40°10' - 34°27' N. lat.	500 lb/ 2 months	CLOSED[5/]	500 lb/ 2 months		400 lb/ month	500 lb/ 2 months
34	South of 34°27' N. lat.	CLOSED[5/]	500 lb/ 2 months	600 lb/ 2 months			400 lb/ 2 months
35	California scorpionfish	CLOSED[5/]	300 lb/ 2 months		400 lb/ 2 months		300 lb/ 2 months

Table 4 (South). Continued

36	**Lingcod**[6/]	CLOSED[5/]	400 lb/ month, when nearshore open	CLOSED[5/]
37	**Other fish**[8/]	Not limited		

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.
2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.
3/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip all year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).
4/ POP is included in the trip limits for minor slope rockfish.
5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).
6/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at IV. A.(17)(f) that may vary seasonally.
8/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

4. On pages 11116–11118, in section IV. NMFS Actions, under C. Trip Limits in the Open Access Fishery, at the end of paragraph (1), Table 5 (North) and Table 5 (South) are revised to read as follows:

IV. NMFS Actions

C. Trip Limits in the Open Access Fishery

(1) * * *

* * * * *

Table 5 (North). 2004 Trip Limits for Open Access Gears North of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections IV. A. and C. NMFS Actions before using this table 092004

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area[8/] (RCA):						
North of 46°16' N. lat.	shoreline - 100 fm					
46°16' N. lat. - 40°10' N. lat.	30 fm - 100 fm					
Beginning October 1, 2004, retention of darkblotched rockfish prohibited.						
1 **Minor slope rockfish[2/]**	Per trip, no more than 25% of weight of the sablefish landed					
2 **Pacific ocean perch**	100 lb/ month					
3 **Sablefish**	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months					
4 **Thornyheads**	CLOSED[5/]					
5 **Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs.					
6 **Arrowtooth flounder**						
7 **Petrale sole**						
8 **Rex sole**						
9 **All other flatfish[3/]**						
10 **Whiting**	300 lb/ month					
11 **Minor shelf rockfish, widow and yellowtail rockfish[2/]**	200 lb/ month					
12 **Canary rockfish**	CLOSED[5/]					
13 **Yelloweye rockfish**	CLOSED[5/]					
14 **Minor nearshore rockfish**	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[6/]					
15 **Lingcod[6/]**	CLOSED[5/]		300 lb/ month			CLOSED[5/]
16 **Other Fish[7/]**	Not limited					
17 **PINK SHRIMP EXEMPTED TRAWL** *(not subject to RCAs)*						
18 North	**Effective April 1 - October 31, 2004:** groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					
19 **SALMON TROLL**						
20 North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons and RCA restrictions listed in the table above.					

1/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.
2/ Bocaccio and chilipepper rockfishes are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.
4/ For black rockfish north of Cape Alava (48°09'30" N. lat.), and between Destruction Island (47°40' N. lat.) and Leadbetter Point (46°38'10" N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).
6/ The size limit for lingcod is 24 inches (61 cm) total length.
7/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.
8/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours, but specifically defined by lat./long. coordinates set out at IV. A.(17)(f), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (South). 2004 Trip Limits for Open Access Gears South of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections IV. A. and C. NMFS Actions before using this table 092004

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[7/] (RCA):						
	40°10' - 34°27' N. lat.	30 fm - 150 fm (also applies around islands, there is an additional closure between the shoreline and 10 fm around the Farallon Islands)		20 fm - 150 fm (also applies around islands, there is an additional closure between the shoreline and 10 fm around the Farallon Islands)		30 fm - 150 fm (also applies around islands, there is an additional closure between the shoreline and 10 fm around the Farallon Islands)	
	South of 34°27' N. lat.	60 fm - 150 fm (also applies around islands)					
	Beginning October 1, 2004, retention of darkblotched rockfish prohibited.						
1	**Minor slope rockfish[2/]**						
2	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
3	South of 38° N. lat.	10,000 lb/ 2 months					
4	**Splitnose**	200 lb/ month					
5	**Sablefish**						
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months					
7	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
8	**Thornyheads**						
9	40°10' - 34°27' N. lat.	CLOSED[5/]					
10	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
11	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb of weight per line are not subject to the RCAs.					
12	**Arrowtooth flounder**						
13	**Petrale sole**						
14	**Rex sole**						
15	**All other flatfish[3/]**						
16	**Whiting**	300 lb/ month					
17	**Minor shelf rockfish, widow and chilipepper rockfish[2/]**						
18	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED[5/]	200 lb/ 2 months		300 lb/ 2 months	
19	South of 34°27' N. lat.	CLOSED[5/]	500 lb/ 2 months				
20	**Canary rockfish**	CLOSED[5/]					
21	**Yelloweye rockfish**	CLOSED[5/]					
22	**Cowcod**	CLOSED[5/]					
23	**Bocaccio**						
24	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED[5/]	100 lb/ 2 months		200 lb/ 2 months	
25	South of 34°27' N. lat.	CLOSED[5/]	100 lb/ 2 months				
26	**Minor nearshore rockfish**						
27	Shallow nearshore						
28	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED[5/]	500 lb/ 2 months	600 lb/ 2 months	500 lb/ 2 months	300 lb/ 2 months
29	South of 34°27' N. lat.	CLOSED[5/]	300 lb/ 2 months				
30	Deeper nearshore						
31	40°10' - 34°27' N. lat.	500 lb/ 2 months	CLOSED[5/]	500 lb/ 2 months		400 lb/ month	500 lb/ 2 months
32	South of 34°27' N. lat.	CLOSED[5/]	500 lb/ 2 months	600 lb/ 2 months			400 lb/ 2 months
33	California scorpionfish	CLOSED[5/]	300 lb/ 2 months		400 lb/ 2 months		300 lb/ 2 months

Table 5 (South). Continued

34	**Lingcod**[4/]	CLOSED[5/]	300 lb/ month, when nearshore open		CLOSED[5/]
35	**Other Fish**[6/]	Not limited			
36	**PINK SHRIMP EXEMPTED TRAWL GEAR** *(not subject to RCAs)*				
37	South	**Effective April 1 - October 31, 2004:** Groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. Beginning October 1, retention of darkblotched rockfish prohibited. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.			
38	**PRAWN AND, SOUTH OF 38°57'30" N. LAT., CALIFORNIA HALIBUT AND SEA CUCUMBER EXEMPTED TRAWL**				
39	**EXEMPTED TRAWL Rockfish Conservation Area**[7/] **(RCA) for CA halibut and Sea Cucumber:**				
40	40°10' - 38° N. lat.	75 fm - 150 fm (additional closure between the shoreline and 10 fm around the Farallon Islands)	100 fm - 150 fm (additional closure between the shoreline and 10 fm around the Farallon Islands)	75 fm - 150 fm (additional closure between the shoreline and 10 fm around the Farallon Islands)	30 fm - 250 fm
41	38° - 36° N. lat.				30 fm - 200 fm (additional closure between the shoreline and 10 fm around the Farallon Islands)
42	36° - 34°27' N. lat.				30 fm - 150 fm along mainland coast and around islands
43	South of 34°27' N. lat.	75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands	75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands	
44	**EXEMPTED TRAWL Rockfish Conservation Area**[7/] **(RCA) for Ridgeback Prawn:**				
45	40°10' - 38° N. lat.	75 fm - 150 fm (additional closure between the shoreline and 10 fm around the Farallon Islands)	100 fm - 150 fm (additional closure between the shoreline and 10 fm around the Farallon Islands)	75 fm - 150 fm (additional closure between the shoreline and 10 fm around the Farallon Islands)	shoreline - 250 fm
46	38° - 36° N. lat.				shoreline - 200 fm (additional closure between the shoreline and 10 fm around the Farallon Islands)
47	36° - 34°27' N. lat.				shoreline - 150 fm along mainland coast and around islands
48	South of 34°27' N. lat.	75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands	75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands	
49		Groundfish 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Beginning October 1, retention of all rockfish is prohibited. Vessels participating in the CA halibut fishery south of 38°57'30" N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 33).			

Table 5 (South). Continued

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.
2/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.
3/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.
4/ The size limit for lingcod is 24 inches (61 cm) total length.
5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).
6/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.
7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours, but specifically defined by lat./long. coordinates set out at IV. A.(17)(f), that may vary seasonally.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

5. In section IV., under D. Recreational Fishery, paragraphs (2)(a) and (b) are revised to read as follows:

* * * * *

(2) Oregon.

(a) Seasons, closed areas. Recreational fishing for groundfish is open from January 1 through December 31 in all areas, except that from June 1 through September 30 and from November 1 through December 31, recreational fishing for groundfish is prohibited seaward of a recreational RCA boundary line approximating the 40–fm (73–m) depth contour, subject to the provisions in paragraph IV.D.(2)(b). Coordinates for the boundary line approximating the 40–fm (73–m) depth contour are listed in section IV.A.(17)(f). Recreational fishing for all groundfish may be prohibited inseason seaward of a boundary line approximating the 30–fm (55–m) depth contour. If a boundary line approximating the 30–fm (55–m) depth contour is implemented inseason, a document will be published in the **Federal Register** pursuant to the requirements of the APA. Coordinates for the boundary line approximating the 30–fm (55–m) depth contour are listed in section IV.A.(17)(f).

(b) Bag limits, size limits. The bag limits for each person engaged in recreational fishing in the EEZ seaward of Oregon are 10 marine fish per day, which excludes salmon, tuna, perch species, sturgeon, sanddabs, lingcod, greenling, cabezon, all rockfish (except yellowtail rockfish outside 40–fm during October 1 through 31), striped bass and baitfish (herring, smelt, anchovies and sardines), but which includes yellowtail rockfish (outside of a boundary line approximating the 40–fm depth contour, as described in paragraph D.(2)(a), during October 1 through 31 only) and other groundfish species (including sablefish and flatfish). Taking and retaining all rockfish (except yellowtail rockfish), greenling, cabezon, and lingcod is prohibited. During the all-depth recreational fisheries for Pacific halibut, vessels with halibut on board may not take and retain, possess or land yelloweye rockfish or canary rockfish.

* * * * *

Classification

These actions are authorized by the Pacific Coast groundfish FMP and its implementing regulations, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(3)(B). Providing prior notice and comment on the inseason adjustments would be impracticable because the data upon which these recommendations were based were provided to the Pacific Council at its September 12–17, 2004, meeting in San Diego, CA. As described below, there was not sufficient time after that meeting to draft this document and undergo proposed and final rulemaking before these regulations are supposed to be effective, October 1, 2004. Many of the previously scheduled RCAs for the October through December period are more liberal (smaller) than the RCAs contained in this inseason action. The delay required by notice and comment would allow sufficient fishing time so that most participants in the fishery could fish in areas with a higher encounter rate of darkblotched and canary rockfish, both of which are projected to exceed their 2004 OYs, before this inseason action would be in effect. Therefore, for the actions to be implemented in this document to reduce mortality of darkblotched and canary rockfish, providing prior notice and opportunity for comment would be impracticable because it would take too long, thus impeding the Agency's function of managing fisheries to approach without exceeding the OYs for federally managed species.

Adjustments to management measures in this inseason action include changes to the management measures for the limited entry groundfish fisheries and Oregon's recreational fishery. Changes to limited entry trawl trip limits implemented with this inseason action are a mix of more conservative and more liberal trip limits than previously scheduled. More liberal trip limits, such as for DTS (Dover sole, thornyheads, and sablefish) complex species must be implemented in a timely manner to allow fishermen continued harvest opportunities throughout the year for species that are tracking below their OYs and in areas where there is minimal impact to overfished species. More conservative trip limits, such as for minor slope rockfish, minor shelf rockfish, and arrowtooth flounder, and bycatch caps for the whiting fishery must be implemented in a timely manner to keep harvest of those species within their 2004 OYs and/or to allow the fisheries to continue throughout the year.

For these reasons, good cause also exists to waive the 30–day delay in effectiveness requirement under 5 U.S.C. 553 (d)(3).

These actions are taken under the authority of 50 CFR 660.323(b)(1) and are exempt from review under Executive Order 12866.

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

Dated: October 1, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–22477 Filed 10-1–04; 3:51 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287–4060–02; I.D. 093004F]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Western Aleutian District of the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2004 total allowable catch (TAC) of Atka mackerel in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 3, 2004, through 2400 hrs, A.l.t., December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands 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 2004 TAC specified for Atka mackerel in the Western Aleutian District of the BSAI is 19,111 metric tons (mt) as established by the 2004 harvest specifications for groundfish of the BSAI (69 FR 9242, February 27, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2004 TAC for Atka mackerel in the Western Aleutian District will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 19,000 mt, and is setting aside the remaining 111 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Western Aleutian District of the BSAI.

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 a 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 closure of the directed fishery for Atka mackerel in the Western Aleutian District of the BSAI.

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 § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 30, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–22478 Filed 10–1–04; 3:29 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–4061–02; I.D. 093004E]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2004 pollock total allowable catch (TAC) for Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 2, 2004, through 2400 hrs, A.l.t., December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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 2004 allowance of the pollock TAC in Statistical Area 630 of the GOA is 14,040 metric tons (mt) as established by the final 2004 harvest specifications for groundfish of the GOA (69 FR 9261, February 27, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the 2004 allowance of the pollock TAC in Statistical Area 630 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 13,950 mt, and is setting aside the remaining 90 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

After the effective date of this closure the maximum retainable amounts at 50 CFR 679.20(e) and (f) apply at any time during a trip.

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 closure of the 2004 pollock TAC in Statistical Area 630.

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 § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 30, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–22479 Filed 10–1–04; 3:29 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–4061–02; I.D. 093004D]

Fisheries of the Economic Exclusive Zone Off Alaska; Groundfish Fisheries by Vessels Using Hook-and-Line Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for groundfish by vessels using hook-and-line gear in the Gulf of Alaska (GOA), except for demersal shelf rockfish in the Southeast Outside District or sablefish. This action is necessary because the 2004 bycatch mortality allowance of Pacific halibut apportioned to hook-and-line gear targeting groundfish other than demersal shelf rockfish in the Southeast Outside District or sablefish has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 2, 2004, through 1200 hrs, A.l.t., December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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 Pacific halibut bycatch mortality allowance for groundfish included in the other hook-and-line fishery, which is defined at § 679.21(d)(4)(iii)(C), was established as 290 metric tons by the 2004 final harvest specifications for groundfish of the GOA (69 FR 9261, February 27, 2004). The other hook-and-line fishery includes all groundfish except for demersal shelf rockfish in the Southeast Outside District or sablefish.

In accordance with § 679.21(d)(7)(ii), the Administrator, Alaska Region, NMFS, has determined that the 2004 Pacific halibut bycatch mortality allowance specified for the hook-and-line groundfish fisheries in the GOA, other than demersal shelf rockfish in the Southeast Outside District or sablefish, has been reached. Consequently, NMFS is prohibiting directed fishing for groundfish other than demersal shelf rockfish in the Southeast Outside District or sablefish by vessels using hook-and-line gear.

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 closure of the fishery resulting in exceeding the 2004 Pacific halibut bycatch mortality allowance specified for the hook-and-line groundfish fisheries in the GOA, other than demersal shelf rockfish in the Southeast Outside District or sablefish.

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 § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: September 30, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–22480 Filed 10–1–04; 3:29 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 69, No. 193

Wednesday, October 6, 2004

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1776

RIN 0572–AB93

Household Water Well System Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the United States Department of Agriculture's Rural Development Utilities Programs, is issuing regulations in order to establish the Household Water System Program as authorized by section 306E of the Consolidated Farm and Rural Development Act (CONACT). This rule will establish a lending program for the construction, refurbishing, and servicing of individually-owned household water well systems in rural areas that are or will be owned by the eligible individuals. In addition, the rule outlines the process by which applicants can apply for the program and how RUS will administer the grant program.

In the final rules section of this **Federal Register**, RUS is publishing this action as a direct final rule without prior proposal because RUS views this as a non-controversial action and anticipates no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule and the action will become effective at the time specified in the direct final rule. If RUS receives adverse comments, a timely document will be published withdrawing the direct final rule and all public comments received will be addressed in a subsequent final rule based on this action.

DATES: Comments on this proposed action must be received by RUS or carry a postmark or equivalent no later than November 5, 2004.

ADDRESSES: Comments may be submitted by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Agency Web Site: *http://www.usda.gov/rus/index2/Comments.htm.* Follow the instructions for submitting comments.
- E-mail: *RUSComments@usda.gov.* Include in the subject line of the message ''7 CFR 1776.''
- Mail: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW, STOP 1522, Washington, DC 20250–1522.
- Hand Delivery/Courier: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW, Room 5168–S, Washington, DC 20250–1522.

Instructions: All submissions received must include that agency name and the subject heading ''7 CFR 1776''. All comments received must identify the name of the individual (and the name of the entity, if applicable) who is submitting the comment. All comments received will be posted without change to *http://www.usda.gov/rus/index2/Comments.htm,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Cheryl Francis, Loan Specialist, Water Programs Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2239–S, Stop 1570, Washington, DC 20250–1570. Telephone (202) 720–1937. E-mail: *Cheryl.Francis@usda.gov.*

SUPPLEMENTARY INFORMATION: *See* the **SUPPLEMENTARY INFORMATION** provided in the direct final rule located in the Rules and Regulations direct final rule section of this **Federal Register** for the applicable **SUPPLEMENTARY INFORMATION** on this action.

Dated: September 2, 2004.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. 04–22447 Filed 10–5–04; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1783

RIN 0572–AB95

Grant Program To Establish a Fund for Financing Water and Wastewater Projects (Revolving Fund Program (RFP))

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: On May 13, 2002, the Farm Security and Rural Investment Act of 2002 (Farm Bill) was signed into law as Public Law 107–171. Section 6002 of the Farm Bill amended the Consolidated Farm and Rural Development Act (CONACT), by adding a grant program to establish a revolving loan fund. The Secretary may make grants to qualified, private, non-profit entities. The grant recipients will use the grant funds to establish a revolving loan fund. The loans will be made to eligible entities to finance pre-development costs associated with proposed water and wastewater projects or with existing water and wastewater systems, and short-term costs incurred for replacement equipment, small-scale extension of services, or other small capital projects that are not part of the regular operations and maintenance activities of existing water and wastewater systems. The Rural Utilities Service (RUS) is proposing to publish rules and regulations to establish the Grant Program to Establish a Fund for Financing Water and Wastewater Projects (Revolving Fund Program (RFP)) as authorized by the Consolidated Farm and Rural Development Act (CONACT), as amended by Section 6002 of the Farm Security and Rural Investment Act of 2002 (Farm Bill).

In the final rule section of this **Federal Register**, RUS is publishing this action as a direct final rule without prior proposal because RUS views this as a non-controversial action and anticipates no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule and the action will become effective at the time specified in the direct final rule. If RUS receives adverse comments, a document will be

published withdrawing the direct final rule and all public comments received will be addressed in a subsequent final rule. Any parties interested in commenting on this proposed action should do so at this time.

DATES: Comments on this proposed action must be received on or before November 5, 2004.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instruction for submitting comments.
- Agency Web site: *http://www.usda.gov/rus/index2.Comments.htm*. Follow the instructions for submitting comments.
- E-mail: *RUSComments@usda.gov*. Include in the subject line of the message ''7 CFR 1783.''
- Mail: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, STOP 1522, Washington, DC 20250–1522.
- Hand Delivery/Courier: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., Room 5168–S, Washington, DC 20250–1522.

FOR FURTHER INFORMATION CONTACT: Stephen Saulnier, Loan Specialist, Water Programs Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2235–S, Stop 1570, Washington, DC 20250–1570. Telephone (202) 690–2526. E-Mail: *stephen.saulnier@usda.gov*.

SUPPLEMENTARY INFORMATION: See the **SUPPLEMENTARY INFORMATION** provided in the direct final rule located in the final rule section of this **Federal Register** for the applicable supplementary information on this action.

Dated: September 2, 2004.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. 04–22445 Filed 10–5–04; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19262; Directorate Identifier 2004–NM–54–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain McDonnell Douglas Model MD–11 and MD–11F airplanes. This proposed AD would require inspecting the power feeder cables of the auxiliary power unit (APU) for chafing damage, and accomplishing any related corrective action. This proposed AD also would require modifying the drain line of the fuel feed shroud of the horizontal stabilizer. This proposed AD is prompted by a report of the drain line of the fuel feed shroud riding on the power feeder cables of the APU. We are proposing this AD to prevent chafing of the power feeder cables of the APU, which could result in electrical arcing to adjacent structure and consequent fire in the airplane.

DATES: We must receive comments on this proposed AD by November 22, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–19262; Directorate Identifier 2004–NM–54–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can

review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received a report indicating that, during a scheduled maintenance period, an operator found the drain line of the fuel feed shroud riding on the power feeder cables of the auxiliary power unit (APU) on a Model MD–11 airplane. Inspections of the operator's fleet revealed that the majority of the airplanes had the same condition. Further investigation revealed that many of the clamps, brackets, and fuel feed drain lines were distorted and bent from the original delivered condition, causing chafing damage to the power feeder cables of the APU. This chafing could result in electrical arcing to adjacent structure and consequent fire in the airplane.

Similar Airplanes

The subject area on certain McDonnell Douglas Model MD–11F airplanes is identical to that on the affected McDonnell Douglas Model MD–11 airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin MD11–28A119, including Appendix A, dated June 3, 2003. The service bulletin describes procedures for inspecting the power feeder cables of the APU for chafing damage, and related corrective action. The related corrective action includes repairing or replacing the power feeder cables if any damage is found that is outside the limits specified in the service bulletin.

The service bulletin also describes procedures for modifying the drain line of the fuel feed shroud of the horizontal stabilizer.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Clarification of Inspection Terminology

In this proposed AD, the ''inspection'' specified in the referenced service bulletin is referred to as a ''general visual inspection.'' We have included the definition for a general visual inspection in a note in the proposed AD.

Costs of Compliance

This proposed AD would affect about 195 airplanes worldwide and 85 airplanes of U.S. registry.

The proposed inspection would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $5,525, or $65 per airplane.

The proposed modification would take about 3 work hours per airplane (including the functional test), at an average labor rate of $65 per work hour. Parts cost would be minimal. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $16,575, or $195 per airplane.

Regulatory Findings

We have 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 that the proposed regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. 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, 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):

McDonnell Douglas: Docket No. FAA–2004–19262; Directorate Identifier 2004–NM–54–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by November 22, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model MD–11 and MD–11F airplanes, certificated in any category; as listed in Boeing Alert Service Bulletin MD11–28A119, dated June 3, 2003.

Unsafe Condition

(d) This AD was prompted by a report of the drain line of the fuel feed shroud riding on the power feeder cables of the auxiliary power unit (APU). We are issuing this AD to prevent chafing of the power feeder cables of the APU, which could result in electrical arcing to adjacent structure and consequent fire in the airplane.

Compliance

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

Inspection/Related Corrective Action/Modification

(f) Within 18 months after the effective date of this AD: Do the actions required by paragraphs (f)(1) and (f)(2) of this AD by doing all the actions specified in the Accomplishment Instructions of Boeing Alert

Service Bulletin MD11–28A119, including Appendix A, dated June 3, 2003.

(1) Accomplish a general visual inspection of the power feeder cables of the APU for chafing damage. Do any related corrective action before further flight.

(2) Modify the drain line of the fuel feed shroud of the horizontal stabilizer (including a functional test after accomplishing the modification).

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Alternative Methods of Compliance (AMOCs)

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

Issued in Renton, Washington, on September 29, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–22471 Filed 10–5–04; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA156–5084b; FRL–7824–3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia: NO_X RACT Determinations for Washington Gas Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia for the purpose of determining the reasonably available control technology (RACT) for the control of nitrogen oxides (NO_X) from Washington Gas Company, Ravensworth Station, located in Fairfax County, Virginia. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 5, 2004.

ADDRESSES: Submit your comments, identified by VA156–5084 by one of the following methods:

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

B. *E-mail: morris.makeba@epa.gov.*

C. *Mail:* Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. VA156–5084. EPA's policy is that all comments received will be included in the public docket without change, 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 Federal *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 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. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Betty Harris, (215) 814–2168, or by e-mail at *harris.betty@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Virginia's Approval of NO_X RACT Determinations for Washington Gas Company, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: September 28, 2004.

Thomas Voltaggio,

Acting, Regional Administrator, Region III.

[FR Doc. 04–22359 Filed 10–5–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. R02–OAR–2004–NY–0001, FRL–7824–9]

Approval and Promulgation of Implementation Plans; New York State Implementation Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes approval of a request from New York to revise its State Implementation Plan (SIP) for ozone to incorporate revisions to Subpart 227–2 ''Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_X)'' of Part 227 ''Stationary Combustion Installations'' of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6NYCRR). The revision relates to the control of oxides of nitrogen emissions from stationary industrial sources. This SIP revision consists of a control measure needed to meet the shortfall in emissions reduction identified by EPA in New

York's one-hour ozone attainment demonstration SIP.

The intended effect of this proposed rule is to approve a control strategy which will result in emission reductions that will help achieve attainment of the national ambient air quality standard for ozone required by the Clean Air Act.

DATES: Comments must be received on or before November 5, 2004.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R02–OAR–2004–NY–0001 by one of the following methods:

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

2. Agency Web site: *http://docket.epa.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *Werner.Raymond@epa.gov.*

4. Fax: (212) 637–3901.

5. Mail: ''RME ID Number R02–OAR–2004–NY–0001'', Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

6. Hand Delivery or Courier: Deliver your comments to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID Number R02–OAR–2004–NY–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/,* 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 Regional Material in EDocket (RME), regulations.gov, or e-mail. The EPA RME website and the federal regulations.gov website are ''anonymous access'' systems, 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 RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Anthony (Ted) Gardella (*Gardella.Anthony@epa.gov*) for specific questions on New York's NO_X RACT SIP revision or Kirk J. Wieber (*Wieber.Kirk@epa.gov*) for specific questions on New York's ozone attainment demonstration; Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3892 or (212) 637–3381, respectively.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency (EPA) proposes to approve the New York State Department of Environmental Conservation's (New York's) NO_X RACT State Implementation Plan (SIP) revision. The following table of contents describes the format for this **SUPPLEMENTARY INFORMATION** section.

I. EPA's Proposed Action
A. What Action Is EPA Proposing Today?
B. Why Is EPA Proposing This Action?
C. What Are the Clean Air Act Requirements for NO_X RACT?
D. What Are the Clean Air Act Requirements for Attainment of the One-Hour Ozone Standard?
E. When Was New York's Additional NO_X RACT Requirement Proposed and Adopted?
F. What Is EPA's Finding on New York's Submittal?
II. Conclusion
III. Statutory and Executive Order Revisions.

I. EPA's Proposed Action

A. What Action Is EPA Proposing Today?

EPA proposes to approve a revision to New York's ground level ozone State Implementation Plan (SIP) which New York submitted on February 18, 2004. The SIP revision includes amendments to the following two regulations: Subpart 227–2 entitled ''Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_X)'' of Part 227 entitled, ''Stationary Combustion Installation;'' and Subpart 201–3 entitled, ''Exemptions and Trivial Activities,'' of Part 201 entitled, ''Permits and Registration,'' all of which are part of Title 6 of the New York Codes of Rules and Regulations. These amended rules were adopted on January 9, 2004. New York submitted the regulations in order to strengthen its one-hour ozone SIP. New York amended Subpart 227–2 for the purpose of reducing additional emissions of NO_X in response to emission reduction shortfalls identified by EPA (64 FR 70364; December 16, 1999) for attainment of New York's one-hour ozone standard. New York amended Subpart 201–3 to be consistent with amendments to Subpart 227–2. EPA proposes that New York's submittal is fully approvable as a SIP strengthening measure for New York's one-hour ground level ozone SIP and has determined that it meets New York's commitment to adopt a control measure for additional NO_X reductions to close the shortfall needed to attain the one-hour ozone standard.

B. Why Is EPA Proposing This Action?

EPA is proposing this action to:

- Give the public the opportunity to submit comments on EPA's proposed action, as discussed in the **ADDRESSES** section,

- Approve a control measure which reduces NO_X emissions, a precursor of ozone formation, to help attain the one-hour national ambient air quality standard (NAAQS) for ozone,
- Fulfill New York's and EPA's requirements under the Clean Air Act (the Act),
- Make New York's NO_X RACT regulations federally enforceable and available for emission reduction credit in the SIP.

C. What Are the Clean Air Act Requirements for NO_X RACT?

The Act requires certain states to develop RACT regulations for major stationary sources of NO_X and to provide for the implementation of the required measures as soon as practicable but no later than May 31, 1995. Under the Act, the definition of major stationary source is based on the tons per year (tpy) air pollution a source emits and the classification of the air in the area in which the source is located. New York is within the Northeast ozone transport region established by section 184(a) of the Act. In ozone transport regions, attainment/unclassified areas as well as marginal and moderate ozone nonattainment areas, a major stationary source for NO_X is considered to be one which emits or has the potential to emit 100 tpy or more of NO_X and is subject to the requirements of a moderate nonattainment area. New York has defined a major stationary source of NO_X as a source which has the potential to emit 25 tpy in the New York City and lower Orange County metropolitan areas and 100 tpy in the rest of the State. Consequently, all major stationary sources of NO_X within the State of New York are required to implement RACT no later than May 31, 1995. For detailed information on the Act requirements for NO_X RACT see the Technical Support Document prepared for today's action.

D. What Are the Clean Air Act Requirements for Attainment of the One-Hour Ozone Standard?

Section 182 of the Act specifies the required SIP submissions and requirements for areas classified as nonattainment for ozone and when these submissions and requirements are to be submitted to EPA by the states. The specific requirements vary depending upon the severity of the ozone problem. The New York—Northern New Jersey—Long Island area is classified as a severe ozone nonattainment area. Under section 182, severe ozone nonattainment areas were required to submit demonstrations of how they would attain the one-hour ozone NAAQS. EPA approved New York's attainment demonstration on February 4, 2002 (67 FR 5170) based on New York adopting additional volatile organic compound (VOC) and NO_X emission reductions. This proposal addresses the NO_X reductions to which New York committed. Moreover, the emission reduction provided by this control measure will also be necessary for attainment of the 8-hour ozone NAAQS.

In a related matter, the Ozone Transport Commission (OTC) developed potential control measures into model rules for a number of source categories and estimated emission reduction benefits from implementing these model rules. These model rules were designed for use by states in developing their own regulations to achieve additional emission reductions to close emission shortfalls. New York used the OTC model rule for additional NO_X reductions as the basis for the regulations which EPA is acting upon in this proposal.

E. When Was New York's Additional NO_X RACT Requirement Proposed and Adopted?

New York's additional NO_x RACT requirements were proposed on July 16, 2003 and the State accepted written comments until the end of the public comment period on September 12, 2003. New York held public hearings on the proposed amendments on August 19, 21 and 23, 2003. The State adopted the amended NO_X RACT requirements on January 9, 2004. New York's SIP revision was submitted to EPA on February 18, 2004. On May 13, 2004 EPA determined the submittal to be administratively and technically complete.

F. What Is EPA's Finding on New York's Submittal?

The following is a summary of EPA's finding of New York's February 18, 2004 SIP submittal consisting of revisions to Subparts 227–2 and 201–3. These revisions go beyond the Act requirements for RACT at facilities that emit NO_X. New York previously submitted SIP revisions which addressed the NO_X RACT requirements and for which EPA approved as SIP revisions on April 28, 2000 (65 FR 24875). The State also developed a NO_X Budget Trading Program (Part 204) which EPA approved on May 22, 2001 (66 FR 28059).

New York revised Subpart 227–2 to further reduce emissions of NO_X in three principal ways. First, New York revised Subpart 227–2 by lowering the presumptive NO_X emission limits for stationary internal combustion engines (IC Engines). The new NO_X emission limits, expressed as grams NO_X per brake horsepower hour, range from 1.5 to 2.3 depending upon the type IC Engine and the fuel combusted which will result in additional NO_X reductions ranging from 25 percent to approximately 78 percent. Secondly, New York revised Subpart 227–2 by lowering the applicability from 225 horsepower to 200 horsepower for IC Engines which not only are located in the severe one-hour ozone nonattainment area but also provide primary power or are used in peak shaving generation. In New York State, the severe one-hour ozone nonattainment area includes the New York City metropolitan area and the lower Orange County metropolitan area. For the remainder of the State, the applicability for IC Engines remains unchanged at 400 horsepower. Third, owners or operators of IC Engines have the option of complying either by meeting the new presumptive NO_X emission limits or by meeting an emission limit which reflects at least 90 percent NO_X reduction from its 1990 baseline emissions, if available. Affected sources must be in compliance with the new Subpart 227–2 requirements by April 1, 2005. The amendments to Subpart 227–2 do not include any new emission limit requirements for source categories other than IC Engines.

The provision at section 227–2.5(c) allows an owner or operator of a source subject to this rule who can adequately demonstrate to New York that the new emission limits are not technically or economically feasible, even through fuel switching, selective catalytic reduction (SCR) or system wide averaging, to apply for a less stringent case-by-case RACT emission limit. The requirement to consider SCR technology is a new criteria added to this provision. This provision is also available to owners or operators of newly regulated IC Engines. Any alternative RACT emission limit must be approved by New York and submitted to EPA as a SIP revision in accordance with the SIP approved compliance option at section 227–2.5(c) of Subpart 227–2.

In addition, New York revised Subpart 227–2 to require owners or operators of affected IC Engines and any source that previously received a case-by-case alternative RACT emission limit pursuant to section 227–2.5(c) to submit to New York either a permit application or a permit modification which includes updated versions of compliance and operating plans. Owners or operators must comply with this new requirement by July 1, 2004.

New York made the following additional revisions to Subpart 227–2: deletion, throughout Subpart 227–2, of the NO_X RACT compliance date requirement of May 31, 1995; revisions to section 227–2.3 [previously entitled ''Compliance plan and deadlines''] including deletion of compliance milestone dates for certain compliance plan and permitting requirements; and revisions to section 227–2.6(b) for certain sources required to submit Continuous Emission Monitoring System (CEMS) compliance plans by May 31, 1995. These revisions remove intermediate compliance steps whose effective dates have passed and the final compliance date which has also passed. The revisions do not affect the applicable requirements and are not a relaxation of SIP requirements. The deletion of the previous rule's effective date in no way relieves any source who was required to comply by that effective date. Should it become necessary to enforce against an owner or operator of sources that were required to be in compliance with any NO_X RACT provision, pursuant to its authority under the Act, and the SIP in effect at the time of the violation, EPA will use the May 31, 1995 compliance date in the SIP approved version of Subpart 227–2 (66 FR 28059; May 22, 2001), or in the SIP as approved by this action, whichever is deemed appropriate.

New York revised Subpart 201–3 for the purpose of regulatory consistency with the new revisions to Subpart 227–2. New York revised Subpart 201–3 to exempt the following sources from permitting requirements at non-title V permitting facilities, however these sources must now be included in title V permitting applications: (1) Diesel or natural gas powered IC Engines, located within the severe one-hour ozone nonattainment area, which have applicability limits lowered from 225 brake horsepower to 200 brake horsepower; and (2) emergency power generating IC Engines and engine test cells at engine manufacturing facilities which are utilized for research and development, reliability performance testing, or quality assurance performance testing. It should be noted that there is a minor discrepancy in terminology used in Subparts 227–2 and 201–3 when referring to the engine size applicability limit (''horsepower'' vs ''brake horsepower'' respectively). Therefore, EPA recommends that, at its next opportunity, New York clarify this discrepancy by revising Subpart 227–2 by changing the engine size applicability term ''horsepower'' to the term ''brake horsepower (bhp)'' so that it is consistent with the term used in the exemption section of Subpart 201–3. For additional details the reader is referred to the Technical Support Document prepared for today's action.

EPA expects that the revisions to Subpart 227–2 will result in additional reductions of NO_X emissions to help New York meet the emission reduction shortfall and attain the one-hour ozone standard. New York has stated to EPA that once all six control measures have been adopted, it will update the projection inventories of NO_X and VOC emissions to establish an accurate estimate of the emission reductions. New York will release the revised projection inventories for public comment and submit them to EPA for approval.

EPA has evaluated New York's NO_X RACT SIP submittal and proposes to find it approvable. The February 18, 2004 SIP submittal will strengthen New York's SIP for reducing ground level ozone by providing additional NO_X reductions beginning on April 1, 2005.

EPA completed a detailed analysis and evaluation to determine the approvability of New York's February 18, 2004 SIP revision. EPA's evaluation of the RACT submittal is detailed in a document entitled ''Technical Support Document-NO_X RACT SIP Revision-State of New York.'' A copy of that document is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document or the Technical Support Document can be viewed at *http://docket.epa.gov/rmepub/*.

II. What Is EPA's Conclusion?

EPA has evaluated New York's submittal for consistency with the Act, EPA regulations, and EPA policy. The proposed new control measures will strengthen the SIP by providing additional NO_X emission reductions. Accordingly, EPA is proposing to approve the revision to Subpart 227–2, as adopted on January 9, 2004, into New York's ozone SIP. At a later date, EPA will act on Subpart 201–3, as adopted by New York on January 9, 2004.

In revising Subpart 227–2, New York deleted the final compliance date applicable to sources because the date had passed, and sources are now expected to be in compliance. EPA believes that the deletion made it less clear to sources obligated to comply with the May 31, 1995 compliance date in the Statute and in the previously approved SIP that they are obliged to have complied by that date. However, deletion of the date does not eliminate the effective date from the prior SIP approved rule or from the Statute and thus does not impact on the State and EPA's authority to enforce. In the event EPA needs to take enforcement action, it will base penalties for noncompliance on the final compliance date in effect at the time of the violation.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885,

April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: September 28, 2004.

Kathleen C. Callahan,

Acting Regional Administrator, Region 2.

[FR Doc. 04–22484 Filed 10–5–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0154; FRL–7682–5]

Bromoxynil, Diclofop-methyl, Dicofol, Diquat, Etridiazole, et al., Proposed Tolerance Actions; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA issued a proposed rule in the **Federal Register** of August 4, 2004, announcing proposed tolerance actions and providing a 60–day public comment period that ends October 4, 2004. This document extends the comment period from October 4, 2004 to October 18, 2004.

DATES: Comments, identified by the docket identification (ID) number OPP–2004–0154, must be received on or before October 18, 2004.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of August 4, intentified by docket ID number OPP–2004–0154.

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail address: *nevola.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

In the proposed rule of August 4, 2004 (69 FR 47051) (FRL–7368–7), the Agency included a list of those who may be potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. What Action is EPA taking?

This document extends the public comment period established in the **Federal Register** proposed rule issued on August 4, 2004 (69 FR 47051). In that document, EPA sought comment on a rule which proposed to revoke, remove, modify, and establish tolerances, and revise tolerance commodity terminologies. Recently, the Agency received a request from the U.S. Department of Commerce on behalf of the People's Republic of China to extend the public comment period for a brief period of time. EPA is hereby extending the public comment period for the proposed rule of August 4, 2004, identified by docket ID number OPP–2004–0154, from October 4, 2004, to October 18, 2004.

List of Subjects in 40 CFR Part 180

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

Dated: September 27, 2004.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 04–22474 Filed 10–1–04; 4:31 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY (EPA)

48 CFR Parts 1511 and 1552

[OARM Docket No. 2002–0001; FRL–7824–7]

Acquisition Regulation: Background Checks for Environmental Protection Agency Contractors Performing Services On-Site

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a proposed rulemaking to amend the EPA Acquisition Regulation (EPAAR) by adding a clause which would have required contractors (and subcontractors) to perform background checks and make suitability determinations for contractor (and subcontractor) employees performing services on or within Federally-owned or leased space or facilities (68 FR 2988, January 22, 2003). The public comments EPA received objected not only to the proposed clause's broad application, but also to its key substantive provisions. EPA has decided to withdraw this proposed EPAAR clause, and plans instead to incorporate a narrowly tailored background check requirement in the Agency's emergency response contracts' statements of work. Currently, this category of contracts consists of Superfund Technical Assistance and Removal Team (START), Emergency and Rapid Response Services (ERRS), and Response Engineering and Analytical Contract (REAC). In the future this requirement may be included in other types of contracts.

FOR FURTHER INFORMATION CONTACT: Paul Schaffer, U.S. EPA, Office of Acquisition Management, Mail Code (3802R), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4366; fax number (202) 565–2475; e-mail address: *schaffer.paul@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulatory Impact:* Because this action withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or other Executive Orders and statutes that generally apply to rulemakings.

List of Subjects in 48 CFR Parts 1511 and 1552

Environmental protection, Government procurement.

The Withdrawal

In consideration of the foregoing, the Notice of Proposed Rulemaking, OARM Docket No. 2002–0001, as published in the **Federal Register** on January 22, 2003 (68 FR 51737), is hereby withdrawn.

Dated: September 30, 2004.

Judy S. Davis,

Director, Office of Acquisition Management.

[FR Doc. 04–22483 Filed 10–5–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ11

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Atriplex coronata var. *notatior* (San Jacinto Valley crownscale)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), herein address the proposed designation of critical habitat for *Atriplex coronata* var. *notatior* (San Jacinto Valley crownscale) pursuant to the Endangered Species Act of 1973, as amended (Act). We identified 15,232 (ac) (6,167 hectares (ha)) of habitat essential for the conservation of *A. coronata* var. *notatior.* In developing this proposal, we evaluated those lands determined to be essential to the conservation of *A. coronata* var. *notatior* to ascertain if any specific areas are appropriate for exclusion from critical habitat pursuant to section 4(b)(2) of the Act. All habitat essential for the conservation of *A. coronata* var. *notatior* is either within our estimate of the areas to be conserved and managed by the approved Western Riverside Multiple Species Habitat Conservation Plan (MSHCP) in Riverside County, California, existing public and quasi-public lands plus additional conserved lands, or within areas where the MSHCP will ensure that future projects will not adversely alter essential hydrological processes. On the basis of our evaluation of the conservation measures afforded *A. coronata* var. *notatior* under the Western Riverside MSHCP, we have concluded that the benefits of excluding the lands covered by this MSHCP outweigh the benefits of including them as critical habitat. Thus, all areas essential for the conservation of *A. coronata* var. *notatior* within the conservation area of the approved Western Riverside MSHCP have been excluded from the designation of critical habitat for this species pursuant to section 4(b)(2) of the Act. Because all essential habitat for this taxon is within the conservation area of the Western Riverside MSHCP, no lands are being proposed as critical habitat for *A. coronata* var. *notatior.* This exclusion will not result in the extinction of *A. coronata* var. *notatior.* We are specifically seeking comment on the determination to exclude all habitat essential for the conservation of this taxon from designation as critical habitat.

DATES: We will accept comments from all interested parties until December 6, 2004. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by November 22, 2004.

ADDRESSES: Written comments and materials may be submitted to us by one of the following methods:

1. You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California, 92009.

2. You may hand-deliver written comments and information to our Carlsbad Fish and Wildlife Office at the above address, or fax your comments to (760) 431–9618.

3. You may send comments by electronic mail (e-mail) to *FW1CFWO_SJVC@fws.gov.* Please see the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received, as well as supporting documentation used in the preparation of this notice, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92009 (telephone (760) 431–9440).

FOR FURTHER INFORMATION CONTACT: Mr. Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92009 (telephone (760) 431–9440 or FAX (760) 431–9440).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposal are hereby solicited. We particularly seek public comment on whether we have appropriately identified all areas essential for the conservation of *Atriplex coronata* var. *notatior,* and on the appropriateness of excluding lands within the Western Riverside MSHCP from designation as critical habitat. Because all areas essential for the conservation of the taxon occur within the MSHCP, the result is that no lands will be proposed for designation as critical habitat for *A. coronata* var. *notatior.* If new information indicates that areas excluded from critical habitat should be designated or that there are additional areas essential for the conservation of the taxon, we may designate critical habitat as appropriate (50 CFR 424.12(g)). Comments are also sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species resulting from the designation;

(2) Specific information on the amount and distribution of *Atriplex coronata* var. *notatior* habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in essential habitat areas and their possible impacts on the subject areas;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposal and, in particular, any impacts on small entities; and

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit Internet comments to *FW1CFWO_SJVC@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn:

San Jacinto Valley crownscale'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 760/431–9440. Please note that the Internet address *FW1CFWO_SJVC@fws.gov* will be closed at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. Additionally, we have also found that comparable conservation can be achieved by implementation of laws and regulations obviating the need for critical habitat. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the Act can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.'' Currently, only 36 percent (445 species) of the 1,244 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,244 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes it is these measures that may make the difference between extinction and survival for many species.

We note, however, that a recent 9th Circuit judicial opinion, *Gifford Pinchot Task Force* v. *United State Fish and Wildlife Service,* has invalidated the Service's regulation defining destruction or adverse modification of critical habitat. We are currently reviewing the decision to determine what effect it may have on the outcome of consultations pursuant to Section 7 of the Act.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been overwhelmed with lawsuits regarding designation of critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA), all are part of the cost of critical habitat designation. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

Herein we discuss only those topics directly relevant to the identification and designation of critical habitat for *Atriplex coronata* var. *notatior.* For more information on the taxon, refer to the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54975).

Habitat

Atriplex coronata var. *notatior* is restricted to highly alkaline, silty-clay soils in association with the Willows soil series and to a lesser extent, the Domino, Traver, Waukena, and Chino soils series (Service 1994, Knecht 1971). *A. coronata* var. *notatior* occupies seasonal wetlands, including floodplains and vernal pools that receive seasonal inundation, and within areas dominated by alkali playas, alkali scrub, and alkali grassland (Bramlet 1993, Roberts 1993). Seasonal wetlands that the species occupies are dependent upon adjacent transitional wetlands and

marginal wetlands within the watershed (Service 1994).

Atriplex coronata var. *notatior* relies upon a hydrologic regime that includes sporadic flooding in combination with slow drainage in alkaline soils and habitats. The duration and extent of flooding or ponding can be extremely variable from one year to the next. Seasonal flooding is an important process that allows habitat to be maintained in a successional state, restores disturbed alkali habitats, and helps to disperse seed. These processes form a dynamic matrix that allows *A. coronata* var. *notatior* to colonize favorable sites and retreat from less favorable sites in response to disturbance and variations in annual rainfall (Service 1994).

Life History

This bushy, erect annual is monoecious (both male and female reproductive organs occur on the same plant), with the staminate and pistillate flowers occurring in mixed clusters (Munz 1974, Taylor and Wilken 1993). *Atriplex coronata* var. *notatior* is a prolific seeder (Ogden Environmental and Energy Services Corporation (OEESC) 1993). Preliminary studies indicate that *A. coronata* var. *notatior* seeds retain a relatively high viability for at least several seasons (OEESC 1993). A viable seed bank may exist in the soil of a known site even if plants are removed or fail to germinate for a season (OEESC 1993). *A. coronata* var. *notatior* produces floating seeds (June 4, 2004, A. Sanders, University of California, Riverside, pers. comm. to S. Brown, U.S. Fish and Wildlife Service). Seasonal flooding is necessary for seed dispersal (Service 1994). The floating seeds are likely dispersed during seasonal flooding by slow-moving flows within the floodplains and vernal pools where *A. coronata* var. *notatior* occurs. *A. coronata* var. *notatior* will generally germinate in the spring as flows recede (Service 1994). The species usually flowers in April and May, and sets fruit by May or June (Bramlet 1992). Other sources indicate that the flowering period may extend to August (California Native Plant Society 2001, Munz 1974). The number of *A. coronata* var. *notatior* plants in a population complex varies in response to rainfall, extent of winter flooding, and temperature (Service 1998).

Status and Distribution

Atriplex coronata var. *notatior* is endemic to western Riverside County, California. The species has not been studied extensively. Population estimates can vary greatly from year to year (Amec Earth and Environmental, Inc. 2001). Between 1990 and 1994, approximately 78,000 individuals of this taxon were located (Service 1998). In the 1998 final rule listing the species, we estimated the total occupied habitat consisted of approximately 400 ac (161.9 ha) of alkali habitats within a range of approximately 8,200 ac (3,318 ha) in western Riverside County (Service 1998). At the time of listing, approximately 75 percent of the known plants were associated with three population centers found in the San Jacinto Wildlife Area/Mystic Lake, the San Jacinto River floodplain between Lakeview and Nuevo, and the upper Salt Creek Vernal Pool Complex in the Hemet area. Recent surveys identified approximately 83,741 individual plants occupying an aggregate total of 236.5 ac (95.71 ha) within a 6,000-ac (2,428 ha) survey area within the San Jacinto River between the Ramona Expressway and the mouth of Railroad Canyon (Glen Lukos Associates, Inc. 2000). The estimated range-wide population of approximately 106,000 plants is based on expected populations of 7,470 plants in the San Jacinto Wildlife Area, 15,000 plants in the Upper Salt Creek Vernal Pool Complex, and 84,000 plants along the San Jacinto River between the Ramona Expressway and the mouth of Railroad Canyon (Glenn Lukos Associates, Inc. 2000).

Atriplex coronata var. *notatior* is currently known from four general occurrence complexes: (1) The floodplain of the San Jacinto River at the San Jacinto Wildlife Area/Mystic Lake; (2) the floodplain of the San Jacinto River between the Ramona Expressway and Railroad Canyon Reservoir; (3) the Upper Salt Creek Vernal Pool Complex in the west Hemet area; and (4) the floodplain of Alberhill Creek north of Lake Elsinore. Most of the known occurrences of *A. coronata* var. *notatior* are on private land, and no occurrences are known from Federal lands. The taxon occurs on State land within the San Jacinto Wildlife Area (California Natural Diversity Data Base (CNDDB) 2003), on land owned by the Riverside County Habitat Conservation Agency (Roberts and McMillan 1997), and on the Upper Salt Creek Wetland Preserve which is owned and managed by Metropolitan Water District (Amec Earth and Environmental, Inc. 2001).

San Jacinto Wildlife Area/Mystic Lake: Atriplex coronata var. *notatior* occurs on approximately 4,500 ac (1,800 ha) of alkali sink habitat including both undisturbed alkali grassland and degraded areas with dense stands of non-native weed species (Bramlet 1996, Roberts and McMillan 1997) within the San Jacinto Wildlife Area/Mystic Lake area. About 700 ac (280 ha) of this habitat has been inundated by Mystic Lake, and another 470 ac (190 ha) is devoted to duck ponds that are flooded through much of the growing season of *A. coronata* var. *notatior* (Roberts and McMillan 1997). Within this area, about 2,865 ac (1,146 ha) of habitat is conserved within the San Jacinto Wildlife Area, however, about 250 ac (100 ha) is devoted to duck ponds with proposed expansions to 550 ac (220 ha) (Roberts and McMillan 1997). At least 36 separate occurrences and as many as 27,000 individual plants, have been reported within the San Jacinto Wildlife Area/Mystic Lake area (Roberts and McMillan 1997). While some of these occurrences (including CNDDB element occurrence 12, with 20,400 individuals) are outside the San Jacinto Wildlife Area, all of the known occurrences in this area are proposed to be conserved within the Western Riverside MSHCP Additional Reserve Lands (Dudek and Associates 2003).

Floodplain of the San Jacinto River between the Ramona Expressway and Railroad Canyon Reservoir: In 1996, Bramlet estimated the habitat for *Atriplex coronata* var. *notatior* in this area to be approximately 3,820 ac (1,546 ha). In 2000, Glenn Lukos Associates surveyed 6,000 ac (2,428 ha) of habitat within the 100-year floodplain of the San Jacinto River between the Ramona Expressway and Railroad Canyon Reservoir. They observed 83,741 individuals on 237 ac (95.7 ha) of habitat (Glenn Lukos Associates, Inc. 2000). Approximately 90 percent of the individuals observed occurred between the Ramona Expressway and Interstate 215. Alkali playa habitat in this area has been greatly reduced in extent in recent years due to agricultural conversion to irrigated crops and alfalfa farming, as well as discing for weed abatement and sheep grazing (Bramlet 1996, Glenn Lukos Associates, Inc. 2000).

In this area, *Atriplex coronata* var. *notatior* is conserved on a 60-ac (24-ha) parcel owned by the Riverside County Habitat Conservation Agency (Roberts and McMillan 1997). The remainder of the habitat in this area is privately owned. The Western Riverside MSHCP is to include the conservation of habitat for *A. coronata* var. *notatior* within the floodplain of the San Jacinto River, and the maintenance of floodplain processes along the river in order to provide for the distribution of the species to shift over time as hydrologic conditions and seed bank sources change. In addition, the MSHCP identifies specific activities that will be covered under the Plan (i.e., covered activities) that are authorized

under the MSHCP. Pursuant to Section 7.3.7 of the MSHCP, the San Jacinto River Flood Control Project is a Covered Activity that would authorize the Riverside County Flood Control and Water Conservation District to design and implement flood control measures (including channelization or some other form or forms of engineered flood control) on the San Jacinto River between the Ramona Expressway and the mouth of Railroad Canyon (''San Jacinto River Project''). In addition to the flood control project, other covered activities within the vicinity of the San Jacinto River include Ramona Expressway bridge and culvert, Nuevo Road bridge, San Jacinto Avenue crossing, I–215 bridge and levee, Case Road bridge, Burlington Northern Santa Fe Railroad bridge, Goetz Road bridge, Ethanac Road bridge, Perris Valley Storm Drain Channel and Romoland Channel. This coverage is contingent upon complying with the criteria described for the San Jacinto River Project in the MSHCP. Included in the first criterion is the requirement that the future flood control project ''[c]onserve lands ('Mitigation Lands') and [provide for] the hydrology'' of the 8 Covered Species, which includes *A. coronata* var. *notatior.*

Upper Salt Creek Vernal Pool Complex: The Upper Salt Creek Vernal Pool Complex in and west of Hemet contains large areas of alkali grassland with alkali playa and vernal pool communities. This region includes around 1,200 ac (485.6 ha) of alkali habitat (Bramlet 1996). The approximately 40-ac (16.2-ha) Upper Salt Creek Wetland Preserve is located on the western edge of this complex. This preserve was purchased and conserved in perpetuity for native species and habitats to offset the effects of the Eastside Pipeline Project (June 1, 2004, W. Wagner, pers. comm. to S. Brown, U.S. Fish and Wildlife Service). Extensive population studies have been conducted over multiple years with varying environmental conditions within the preserve. In 1996, the *Atriplex coronata* var. *notatior* population was estimated at 16,500 individuals within the preserve. In 1997, the population was estimated at 6,200 individuals. In 1998, the population was estimated at 20,800 individuals, and in 2001, the population was estimated at 136,948 individuals (Amec Earth and Environmental, Inc. 2001). The remainder of the habitat in this area is privately owned, however, the MSHCP proposes the conservation of at least 6,900 acres of suitable habitat for the species within the San Jacinto River, Mystic Lake and Salt Creek areas. This conservation is to include the floodplain of an unnamed tributary to Salt Creek, and the MSHCP requires that floodplain processes be maintained along the tributary to provide for the distribution of the species to shift over time as hydrologic conditions and seed bank sources change.

Alberhill Creek: This location of 185 plants was noted in 1997 and mapped southeast of Nichols Road and west of Alberhill Creek (CNDDB 2003). More populations may occur in adjacent playa habitat (CNDDB 2003). Though this population is on private lands, however, the MSHCP proposes to conserve these lands within its Additional Reserve Lands (Dudek and Associates 2003).

Threats

Atriplex coronata var. *notatior* is declining throughout its range due to habitat destruction and fragmentation resulting from urban and agricultural development, pipeline construction, alteration of hydrology and floodplain dynamics, excessive flooding, channelization, off-road vehicle activity, trampling by cattle and sheep, weed abatement, fire suppression practices (including discing and plowing), and competition from non-native plant species (Bramlet 1993, Roberts and McMillan 1997, Service 1998).

Conservation Needs

The conservation needs of *Atriplex coronata* var. *notatior* include conservation and management of occurrences to provide for long-term survival of the species within the larger context of the vernal playa community and its supporting hydrology. The spatial distribution of *A. coronata* var. *notatior* shifts over time as environmental conditions and the seed bank distribution change (Service 1998). *A. coronata* var. *notatior* lives in seasonal wetland habitat that is dependent on adjacent transitional wetlands and marginal wetlands within the watershed (Service 1994).

Previous Federal Actions

Please see the final listing rule *Atriplex coronata* var. *notatior* for a description of previous Federal actions through October 13, 1998 (63 FR 54975). At the time of the final rule, the Service determined designation of critical habitat was not prudent because such designation would not benefit the species.

On November 15, 2001, a lawsuit was filed against the Department of the Interior (DOI) and the Service by the Center for Biological Diversity and California Native Plant Society, challenging our ''not prudent'' determinations for eight plants including *Atriplex coronata* var. *notatior* (*CBD, et al.* v. *Norton,* No. 01–CV–2101 (S.D. Cal.)). A second lawsuit asserting the same challenge was filed against DOI and the Service by the Building Industry Legal Defense Foundation (BILD) on November 21, 2001 (*BILD* v. *Norton,* No. 01–CV–2145 (S.D. Cal.)). The parties in both cases agreed to remand the critical habitat determinations to the Service for additional consideration. In an order dated July 1, 2002, the U.S. District Court for the Southern District of California directed us to reconsider our not prudent finding and publish a proposed critical habitat rule for *A. coronata* var. *notatior,* if prudent, on or before January 30, 2004. In a motion to modify the July 1, 2002 order, the DOI and the Service requested that the due date for the proposed rule for *A. coronata* var. *notatior* be extended until October 1, 2004. This motion was granted on September 9, 2003. This proposal complies with the court's ruling.

In 2004, the Service completed a Biological and Conference Opinion in accordance with section 7 of the Act, regarding the issuance of an incidental take permit in connection with the Western Riverside County MSHCP pursuant to section 10(a)(1)(B) of the Act (Service 2004). The MSHCP establishes a multi-species conservation program to minimize and mitigate the expected loss of habitat values and the incidental take of ''covered species.'' The intent of the MSHCP is to minimize incidental take of covered animals species in the Plan Area and to provide avoidance, minimization, and mitigation measures for the impacts of proposed activities on covered species and their habitats. The MSHCP Plan Area encompasses approximately 1.26 million ac (509,900 ha) in western Riverside County, including the entire known range of *Atriplex coronata* var. *notatior. A. coronata* var. *notatior* is a covered species under the MSHCP. In its Biological and Conference Opinion, the Service concluded that the MSHCP would not jeopardize the continued existence of *A. coronata* var. *notatior* (Service 2004). The MSHCP is discussed in greater detail in the section entitled ''Relationship of Critical Habitat to the Western Riverside Multiple Species Habitat Conservation Plan (MSHCP).''

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in

accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat.

To be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Occupied habitat may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2)).

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271) and our U.S. Fish and Wildlife Service Information Quality Guidelines (2002) provide criteria, establish procedures, and provide guidance to ensure that our decisions represent the best scientific and commercial data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, 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.

Critical habitat designations do not signal that habitat outside the designation is unimportant to *Atriplex coronata* var. *notatior.* Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1), and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act, we used the best scientific and commercial data available in determining the areas that are essential to the conservation of *Atriplex coronata* var. *notatior.* These included data from research and survey observations published in peer-reviewed articles, regional Geographic Information System (GIS) vegetation, soil, and species coverages (including layers for Riverside County), and data compiled in the CNDDB. We also reviewed available information that pertains to the habitat requirements (i.e., primary constituent elements) of this taxon such as material included in reports submitted during section 7 consultations.

After all the information about the known occurrences of *Atriplex coronata* var. *notatior* was compiled, we created maps indicating the essential habitat associated with each of the occurrences. We used the information outlined above to aid in this task. The essential habitat was mapped using GIS and refined using topographical and aerial map coverages. These essential habitat areas were further refined by discussing each area with Fish and Wildlife Service biologists familiar with each area. After creating GIS coverage of the essential areas, we created legal descriptions of the essential areas. We used a 100-meter grid to establish Universal Transverse Mercator (UTM) North American Datum 27 (NAD 27) coordinates which, when connected, provided the boundaries of the essential areas.

The areas of essential habitat were then analyzed with respect to special management considerations or protection and the provisions of section 4(b)(2) of the Act. Applicable and appropriate exclusions were made based on section 4(b)(2).

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and that may require special management considerations and protection. These include, but are not limited to: Space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific biological and physical features, otherwise referred to as the primary constituent elements, which comprise *Atriplex coronata* var. *notatior* habitat are based on specific components that provide for the essential biological requirements of the species as described below.

Space for Individual and Population Growth, and for Normal Behavior

Atriplex coronata var. *notatior* occupies seasonal wetlands, including vernal pools and floodplains that receive seasonal inundation (Service 1994). The species occurs within alkali playas, alkali scrub, and alkali

grassland, where these habitats occur in association with the Willows soil series, and to a lesser extent, the Domino, Traver, Waukena, and Chino soils series (Service 1994, Knecht 1971). Seasonal wetlands that the species occupies are dependent upon adjacent transitional wetlands and marginal wetlands within the watershed (Service 1994). These areas do not occur in great abundance, and in recent years have been degraded and lost to agriculture, off-road vehicle use, grazing, flood control projects, and development, including pipeline projects, transportation projects, and residential development projects (Service 1994).

The four locations where the taxon is known to occur are no longer pristine and undisturbed. However, these wetlands and associated hydrology continue to provide essential biological and physical features necessary for this species in all four locales. All remaining occurrence complexes have been impacted by agricultural activities (Bramlet 1993, CNDDB 2003, Roberts and McMillan 1997, Service 1998). The taxon is also affected by non-agricultural related clearing activities (Bramlet 1993, CNDDB 2003, Roberts and McMillan 1997, Service 1998). Some of the lands that make up the San Jacinto Wildlife Area were agricultural lands, and some farming continues today. The occurrence complex that occupies the floodplain of the San Jacinto River between the Ramona Expressway and the mouth of Railroad Canyon has been severely degraded during recent years by agriculture, including irrigated crops and alfalfa farming. Habitat at the Salt Creek Vernal Pool Complex has been degraded as a result of dry land farming. The occurrence at Alberhill Creek is adjacent to a plowed field.

Atriplex coronata var. *notatior* can persist in the seed bank within disturbed lands, including agricultural areas. Restoration of these disturbed areas is essential for the conservation of this taxon. *A. coronata* var. *notatior* is expected to re-establish itself from the seed bank once lands that were previously cleared or are being used for agriculture are restored.

Water and Physiological Requirements

Atriplex coronata var. *notatior* requires a hydrologic regime that includes sporadic flooding in combination with slow drainage in alkaline soils and habitats. The duration and extent of flooding or ponding can be extremely variable from one year to the next. Seasonal flooding is an important process that allows habitat to be maintained in a successional state, restores disturbed alkali habitats, and helps to disperse seed. These processes form a dynamic matrix that allows *A. coronata* var. *notatior* to colonize favorable sites and retreat from less favorable sites in response to disturbance and variations in annual rainfall (Service 1994). Irreversible actions that alter the hydrology of the seasonal wetlands or infringe upon the wetlands may threaten the survival of *A. coronata* var. *notatior*.

The San Jacinto Wildlife Area/Mystic Lake occurrence complex and the occurrence complex located between the Ramona Expressway and the mouth of Railroad Canyon depend upon the San Jacinto River for their hydrology and seasonal flooding. The occurrence at Alberhill Creek depends upon the creek for its hydrology and seasonal flooding. The occurrence at the Upper Salt Creek Vernal Pool Complex is located in part within the floodplain of an unnamed tributary to Salt Creek. The natural floodplain processes of these waterways must be maintained as discussed in the Western Riverside MSHCP to allow for the conservation of these occurrence complexes.

The Upper Salt Creek Vernal Pool Complex is in a natural depression and rainfall from the surrounding area flows across the land and pools within the complex. While some of the runoff is from undeveloped hillsides, providing the complex with a needed source of minerals, much of the watershed has been developed, and the flows traveling to the vernal pools include a large amount of urban runoff. The maintenance of clean, seasonal flows from the surrounding watershed is necessary for the conservation of this vernal pool complex.

Sites for Reproduction, Germination, and Seed Dispersal

Seasonal flooding, as indicated above, is important for the reproduction, germination, and seed dispersal of *Atriplex coronata* var. *notatior*. The natural process of seasonal flooding allows habitat to be maintained in a successional state, restores disturbed alkali habitats, and helps to disperse seed. This flooding allows *A. coronata* var. *notatior* to colonize favorable sites and retreat from less favorable sites in response to disturbance and variations in annual rainfall (Service 1994). *A. coronata* var. *notatior* produces floating seeds (June 4, 2004, A. Sanders, University of California, Riverside, pers. comm. to S. Brown, U.S. Fish and Wildlife Service). Seasonal flooding is necessary for seed dispersal (Service 1994). The floating seeds are likely dispersed during seasonal flooding by slow-moving flows within the floodplains and vernal pools where *A. coronata* var. *notatior* occurs. Natural floodplain processes are integral to the biotic processes this species uses to disperse and reproduce.

The San Jacinto Wildlife Area/Mystic Lake occurrence complex and the occurrence complex located between the Ramona Expressway and the mouth of Railroad Canyon depend upon the seasonal flooding from the San Jacinto River for seed dispersal and for the maintenance of sites where seeds can germinate. The occurrence at Alberhill Creek depends upon the seasonal flooding of the creek for seed dispersal and for the maintenance of sites where seeds can germinate. The occurrence complex at the Upper Salt Creek Vernal Pool Complex depends upon the seasonal inundation of the pools from a combination of sheet flow from the surrounding watershed and the seasonal flooding of an unnamed tributary to Salt Creek for seed dispersal and the maintenance of sites where seeds can germinate. These natural hydrological processes must be maintained to allow for the reproduction and dispersal of the species within this occurrence complex.

Pursuant to our regulations (50 CFR 424), we are required to identify the known physical and biological features, *i.e.*, primary constituent elements, essential to the conservation of *Atriplex coronata* var. *notatior*, together with a description of any critical habitat that is proposed. In identifying the primary constituent elements, we used the best available scientific and commercial data available. The primary constituent elements determined to be essential to the conservation of *A. coronata* var. *notatior* are:

(1) Seasonal wetland habitats, including floodplains and vernal pools, and the natural hydrologic processes upon which these habitats depend;

(2) Vegetation communities, including alkali playa, alkali scrub, and alkali grassland habitats, within which the taxon is known to occur; and

(3) Slow-draining alkali soils with a hard pan layer that provides for a perched water table, including the Willows, Domino, Traver, Waukena, and Chino Soils Series (Knecht 1971).

Description of Essential Habitat

Atriplex coronata var. *notatior* has a narrow geographic distribution. Within its range, the taxon has specialized habitat requirements, including hydrology, vegetation communities, and soils. The areas that provide these specialized habitat requirements do not occur in great abundance and have been degraded and lost in recent years. The known range of the species is limited to

four occurrence complexes within western Riverside County. The four occurrence complexes are: (1) Floodplain of the San Jacinto River at the San Jacinto Wildlife Area/Mystic Lake; (2) Floodplain of the San Jacinto River between the Ramona Expressway and Railroad Canyon Reservoir; (3) Upper Salt Creek Vernal Pool Complex; and (4) Alberhill Creek. Each of these four occurrence complexes is essential to the conservation of the species. (Not all known populations of *A. coronata var. notatior* are considered essential for the conservation of the species, but all are conserved as part of the Western Riverside MSHCP). The significance of each occurrence complex is described in detail in the Background section. These complexes are mapped as three units in Map 1: Unit 1—San Jacinto River; Unit 2—Salt Creek (Hemet); and Unit 3—Alberhill.

Unit 1—San Jacinto River includes the first two occurrence complexes (the floodplain of the San Jacinto River at the San Jacinto Wildlife Area/Mystic Lake and the floodplain of the San Jacinto River between the Ramona Expressway and Railroad Canyon Reservoir) and comprises 12,046 acres, 6,535 ac (2,645 ha) of which are privately owned and 5,511 ac (2,230 ha) of which are owned by the California Department of Fish and Game. Between the mouth of the Railroad Canyon to the southwest and the Ramona Expressway, this unit is defined by the written criteria in the MSHCP. From the Ramona Expressway down to Interstate 215, these criteria closely follow the combined boundary of the mapped suitable soils and 100-year floodplain. South of I–215, the unit is constrained at the point where the Perris Valley Storm Drain enters the San Jacinto River from the North. The San Jacinto River is proposed to be channelized here. This will affect approximately 10 percent of the remaining *Atriplex coronata* var. *notatior* (a rough estimate, as the populations fluctuate greatly with rainfall). North of the Ramona Expressway, within the San Jacinto Wildlife Area, the unit follows the 100-year floodplain of the San Jacinto River (excluding a small strip of heavily farmed agricultural land) east to Bridge Street. Along the eastern boundary, the unit follows the edge of the 100-year floodplain (where it meets the hills). A private dairy and a duck club on the eastern side are not included in this unit. The boundary follows the combined edge of the soils and 100-year floodplain around Mystic Lake on the northern end, and then roughly follows the combined edge of the soils and 100-year floodplain along the west side next to the Bernasconi Hills. Here the line bows out from the floodplain/soils line toward the edge of the hills to include a mapped occurrence of *A. coronata* var. *notatior*.

Unit 2—Salt Creek (Hemet) includes the third occurrence complex (Upper Salt Creek Vernal Pool Complex) and comprises 3,154 ac (1,277 ha), all of which are privately owned. To the south, this unit is bound by a tributary to Salt Creek that provides hydrology to part of the complex. To the west, the boundary follows the ridgeline that defines the watershed up to the northern extent of the Heartland Development (the Service has a Memorandum of Understanding that Heartland will ensure clean water flows continue to the south from their detention basin). To the southeast, the boundary includes part of the vernal pool complex, then bows in to avoid the Hemet Auto Mall, and back out to the northeast extent where it picks up the outflow of the Seattle Channel, which provides water to part of the complex by sheet flow across the land. To the northeast, the project is bound by the Tres Cerritos Hills, which also constitute part of the watershed. Unit 2 gets its water from a combination of the tributary to the south and the watershed to the north.

Unit 3—Alberhill includes the fourth occurrence complex and comprises 32.3 ac (13.1 ha), all of which are privately owned. The Unit occurs within the floodplain of Alberhill Creek in a small pocket of willows soils. The edges of the unit are defined by the edge of the soil pocket. The north boundary is defined by Nichols Road. The south boundary is defined by a large stand of riparian vegetation.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas determined to be essential for conservation may require special management considerations or protection. Each of the four occurrence complexes of *Atriplex coronata* var. *notatior* faces existing threats that require special management and/or protection (Bramlet 1993, Roberts and McMillan 1997, Service 1998). The occurrence complex that occupies the floodplain of the San Jacinto River between the Ramona Expressway and Railroad Canyon Reservoir is threatened by non-agriculture related clearing, agricultural activity, including irrigated crops and alfalfa farming, and a proposed flood control project (Bramlet 1996, Roberts and McMillan 1997, Dudek and Associates 2003). The occurrence complex that occupies the San Jacinto Wildlife Area/Mystic Lake is threatened by invasive and weedy plant species introduced as food sources for waterfowl and also remaining from historical agricultural production (Bramlet 1996). Alteration of habitat for duck ponds (Roberts and McMillan 1997) and off-road vehicle activity (CNDDB 2003) are also management concerns in this area. The occurrence complex located within the Salt Creek Vernal Pool Complex is threatened by agricultural activities, including dry-land farming, weed abatement and fire suppression practices, grazing, invasion of non-native plant species, alteration of hydrology, fragmentation, and a proposed road realignment project (CNDDB 2003, Bramlet 1996, Roberts and McMillan 1997, Dudek and Associates 2003). The occurrence complex at Alberhill Creek is located in a rapidly urbanizing area and is subject to the threat of increased human-associated disturbance. Actions that alter habitat suitable for the species or affect the natural hydrologic processes upon which the species depends could threaten the species in this area.

Special management and/or protection for these occurrence complexes includes: (1) Protection of habitat by the Western Riverside MSHCP; (2) protection of floodplain processes by species-specific criteria in the MSHCP; (3) reduction of land conversion to agriculture by the MSHCP; and (4) land acquisition that will allow restoration of lands that have already been converted to agriculture.

Proposed Critical Habitat Designation

We evaluated all four habitat areas (occurrence complexes) essential for the conservation of *Atriplex coronata* var. *notatior* for exclusion from critical habitat pursuant to section 4(b)(2) of the Act. All four essential habitat areas are within the conservation area of the approved Western Riverside Multiple Species Habitat Conservation Plan (MSHCP) in Riverside County. On the basis of our evaluation of the conservation measures afforded *A. coronata* var. *notatior* under the MSHCP, we have concluded that the benefit of excluding the lands covered by this MSHCP outweighs the benefit of including them as critical habitat (see discussion in section entitled ''Exclusions Under Section 4(b)(2) of the Act''). Thus, we are excluding the lands covered by this MSHCP from the designation of critical habitat for this taxon, pursuant to section 4(b)(2) of the Act. Because we have excluded all essential habitat areas from the

proposal, we are not proposing to designate any critical habitat for *A. coronata* var. *notatior.*

Effects of Critical Habitat Designation

Section 7 Consultation

No critical habitat is being designated for *Atriplex coronata* var. *notatior.* The following is a general discussion of the section 7 consultation process for designated critical habitat.

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.2, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: Alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' We are currently reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a) of the Act requires Federal agencies, including the Service, 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 proposed or 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 us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. 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. Through this consultation, the action agency ensures that the permitted actions do not jeopardize the continued existence of the species or destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of 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 critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Even in the absence of critical habitat designation, activities on Federal lands that may affect *Atriplex coronata* var. *notatior* will require section 7 consultation. Activities lands that may affect *A. coronata* var. *notatior* on private or State lands requiring a permit from a Federal agency, such as a permit from the Army Corps under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (e.g., Federal Highway Administration or Federal Emergency Management Agency funding), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. If critical habitat for *Atriplex coronata* var. *notatior* were to be designated, then activities that may destroy or adversely modify critical habitat would include those that appreciably reduce the value of critical habitat to the taxon. We note that such activities may also jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat to the listed species.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These Federal actions include, but are not limited to:

(1) Removing, thinning, or destroying *Atriplex coronata* var. *notatior* habitat, whether by burning, mechanical, chemical, or other means (e.g., plowing, grubbing, grading, grazing, woodcutting, construction, road building, mining, mechanical weed control, herbicide application, etc.);

(2) Activities that appreciably degrade or destroy *Atriplex coronata* var. *notatior* habitat could include, but are not limited to, livestock grazing, clearing, disking, farming, residential or commercial development, introducing or encouraging the spread of nonnative species, off-road vehicle use, and heavy recreational use;

(3) Activities that appreciably diminish habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, or fragmentation); and

(4) Any activity, including the regulation of activities by the Corps of Engineers under section 404 of the Clean Water Act or activities carried out by or authorized by the Environmental Protection Agency (EPA), that could alter watershed or soil characteristics in ways that would appreciably alter or reduce the quality or quantity of surface and subsurface flow of water needed to maintain *Atriplex coronata* var. *notatior* habitat. These activities could include, but are not limited to, altering the natural fire regime; development, including road building and other direct or indirect activities; agricultural activities, livestock grazing, and vegetation manipulation such as clearing or grubbing in the watershed upslope from *A. coronata* var. *notatior.*

(5) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities, or any activity funded or carried out by the Department of Transportation or Department of Agriculture that results in discharge of dredged or fill material, excavation, or mechanized land clearing of *Atriplex coronata* var. *notatior* habitat;

(6) Sale or exchange of lands by a Federal agency to a non-Federal entity;

(7) Licensing of construction of communication sites by the Federal Communications Commission;

(8) Funding of construction or development activities by the U.S. Department of Housing and Urban Development; and

(9) Funding and implementation of disaster relief projects by the FEMA and the Natural Resource Conservation Service's Emergency Watershed Program, including erosion control, flood control, and stream bank repair to reduce the risk of loss of property.

Federal agencies already consult with us on activities in areas currently occupied by the species or if the species may be affected by the action to ensure that their actions do not jeopardize the continued existence of the species.

Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, 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. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species.

In our critical habitat designations, we have used the provisions outlined in section 4(b)(2) of the Act to evaluate lands essential to the conservation of the subject species for possible exclusion from proposed critical habitat. Lands which we have either excluded from or not included in critical habitat based on those provisions include those covered by: (1) Legally operative HCPs that cover the species and provide assurances that the conservation measures for the species will be implemented and effective; (2) draft HCPs that cover the species, have undergone public review and comment, and provide assurances that the conservation measures for the species will be implemented and effective (i.e., pending HCPs); (3) Tribal conservation plans that cover the species and provide assurances that the conservation measures for the species will be implemented and effective; (4) State conservation plans that provide assurances that the conservation measures for the species will be implemented and effective; and (5) Service National Wildlife Refuge System Comprehensive Conservation Plans that provide assurances that the conservation measures for the species will be implemented and effective.

Relationship of Critical Habitat to the Western Riverside Multiple Species Habitat Conservation Plan

As described above, section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic and national security impacts, when designating critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. Development of a Habitat Conservation Plan (HCP) is a prerequisite for the issuance of an incidental take permit pursuant to section 10(a)(1)(B) of the Act. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take.

HCPs vary in size and may provide for incidental take coverage and conservation management for one or many federally listed species. Additionally, more than one applicant may participate in the development and implementation of an HCP. Large regional HCPs expand upon the basic requirements set forth in section 10(a)(1)(B) of the Act because they reflect a voluntary, cooperative approach to large-scale habitat and species conservation planning. Many of the large regional HCPs in southern California have been, or are being, developed to provide for the conservation of numerous federally listed species and unlisted sensitive species and the habitat that provides for their biological needs. These HCPs address impacts in a planning area and create a preserve design within the planning area. Over time, areas in the planning area are developed according to the HCP, and the area within the preserve is acquired, managed, and monitored. These HCPs are designed to implement conservation actions to address future projects that are anticipated to occur within the planning area of the HCP, in order to reduce delays in the permitting process.

The Western Riverside MSHCP was in development from 1993 to this year. Participants in this HCP include 14 cities, the County of Riverside (including the Riverside County Flood Control and Water Conservation Agency, Riverside County Transportation Commission, Riverside County Parks and Open Space District, and Riverside County Waste Department), the California Department of Parks and Recreation, and the California Department of Transportation. The Western Riverside MSHCP is a subregional plan under the State's NCCP and was developed in cooperation with the California Department of Fish and Game. The MSHCP establishes a multi-species conservation program to minimize and mitigate the expected loss of habitat values and the incidental take of ''covered species.'' The intent of the MSHCP is to minimize incidental take of these species in the Plan Area and to provide avoidance, minimization, and mitigation measures for the impacts of proposed activities on covered species and their habitats. Within the 1,260,000 ac (510,000 ha) Plan Area of the MSHCP, approximately 153,000 ac (62,000 ha) of diverse habitats are to be conserved. The proposed conservation of 153,000 ac (62,000 ha) will complement other existing natural and open space areas (e.g., State Parks, Forest Service, and County Park Lands). The MSHCP Plan Area encompasses the entire known range of *Atriplex coronata* var. *notatior*.

Atriplex coronata var. *notatior* is a covered species under the MSHCP. The taxon occurs on State land within the

San Jacinto Wildlife Area, on land owned by the Riverside County Habitat Conservation Agency, and on the Upper Salt Creek Wetland Preserve which is owned and managed by Metropolitan Water District. These conserved lands, which were identified as Public-Quasi Public (PQP) lands in the Western Riverside MSHCP, will be monitored and managed pursuant to the plan. Moreover, the Western Riverside MSHCP proposes the conservation and management of additional habitat for the species within the San Jacinto River, Mystic Lake, and Salt Creek areas. Based on our estimate of the extent of the PQP lands together with the additional lands (i.e., Additional Reserve Lands) of conservation proposed by the MSHCP, only a small portion of essential habitat occurs outside of our estimate of the Conservation Reserve Design for the MSHCP, as summarized in Table 9–2 of the MSHCP. These acres are essential because they provide for the hydrological processes affecting its wetland habitat. However, the MSHCP ''will maintain alluvial processes (floodplain hydrology and flooding) upon which this species depends'' and commits to not altering adversely existing runoff from adjacent lands (see Section 6.1.4 of the MSHCP). As stated in Table 9–2 of the Western MSHCP: ''Conservation for this species will be achieved by inclusion of at least 6,900 acres of suitable Conserved Habitat and the locality at Alberhill Creek near Lake Elsinore and the three core localities (Mystic Lake, the San Jacinto River and the upper Salt Creek drainage) within large blocks of Habitat in the MSHCP Conservation Area. In addition, implementation of Objective 3 for this species will provide new data to guide Reserve Assembly, management and monitoring. Implementation of Objectives 4 and 5 for this species will maintain alluvial processes (floodplain hydrology and flooding) upon which this species depends.'' Under the MSHCP, Reserve Managers are also responsible for preventing alteration of hydrology and floodplain dynamics, farming, fire, and fire suppression activities, off-road vehicle use, and competition from non-native plant species (Dudek and Associates 2003).

The remaining occurrences of *Atriplex coronata* var. *notatior* are located on private lands. The MSHCP provides for the conservation of most of the occurrences within all 4 occurrence complexes. Under the MSHCP, the species is anticipated to persist within 80 percent of its modeled habitat (Service 2004).

In 2004, the Service completed a Biological and Conference Opinion, in accordance with section 7 of the Act, regarding the issuance of an incidental take permit for implementation of the Western Riverside County MSHCP pursuant to section 10(a)(1)(B) of the Act (Service 2004). The Service concluded that the MSHCP would not jeopardize the continued existence of *Atriplex coronata* var. *notatior* (Service 2004). Several covered activities discussed under the MSHCP have the potential to impact populations within these conserved areas, including the San Jacinto River Flood Control Project and the State Route 79 Realignment Project. These projects will require additional consultation with our agency under section 7 of the Act (Dudek and Associates 2003). While the outcome of future section 7 consultations is not known, we anticipate that the application of the jeopardy standard will ensure that actions funded, authorized, or carried out by a Federal agency will not jeopardize the continued existence of *A. coronata* var. *notatior*. Thus, the exclusion of the essential habitats from critical habitat under section 4(b)(2) of the Act will not result in the extinction of the species.

The following discussion presents our rationale for excluding from critical habitat designation the areas of essential habitat for *Atriplex coronata* var. *notatior* within the Western Riverside MSHCP.

(1) Benefits of Inclusion

The principal benefit of any designated critical habitat is that federally funded or authorized activities in such habitat require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. Where HCPs are in place, our experience indicates that this benefit is small or nonexistent. Currently approved and permitted HCPs are designed to ensure the long-term survival of covered species within the plan area. In an approved HCP, lands we ordinarily would define as critical habitat for covered species will normally be protected in reserves and other conservation lands by the terms of the HCP and its IA. These HCPs and IAs include management measures and protections for conservation lands designed to protect, restore, and enhance their value as habitat for covered species, and thus provide benefits well in excess of those that would result from a critical habitat designation. In the instance of the Western Riverside MSHCP, *Atriplex coronata* var. *notatior* is a covered species. The MSHCP establishes a multi-species conservation program to minimize and mitigate the expected loss of habitat values and the incidental take of ''covered species.'' The intent of the MSHCP is to minimize incidental take of these species in the Plan Area and to provide avoidance, minimization, and mitigation measures for the impacts of proposed activities on covered species and their habitats. We do not believe that designation of MSHCP-covered lands as critical habitat will appreciably benefit *A. coronata* var. *notatior* beyond the protection already afforded the species under the Act. The Service, in its 2004 Biological and Conference Opinion, concluded that the MSHCP would not jeopardize the continued existence of *A. coronata* var. *notatior* (Service 2004).

(2) Benefits of Exclusion

The benefits of excluding lands within HCPs from critical habitat designation include carrying out the assurances provided by the Service to landowners, communities, and counties in return for their voluntary adoption of the HCP, including relieving them of the additional regulatory burden that might be imposed by critical habitat. Many HCPs, particularly large regional HCPs take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery objectives for listed species that are covered within the plan area. Additionally, many of these HCPs provide conservation benefits to unlisted, sensitive species. Imposing an additional regulatory review after an HCP is completed solely as a result of the designation of critical habitat may undermine conservation efforts and partnerships in many areas. In fact, it could result in the loss of species' benefits if participants abandon the voluntary HCP process because it may result in additional regulations requiring more of them than other parties who have not voluntarily participated in species conservation. Designation of critical habitat within the boundaries of approved HCPs could be viewed as a disincentive to those entities currently developing HCPs or contemplating them in the future.

A related benefit of excluding lands within HCPs from critical habitat designation is the unhindered, continued ability to seek new partnerships with future HCP participants including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. If lands within HCP plan areas are designated as

critical habitat, it would likely have a negative effect on our ability to establish new partnerships to develop HCPs, particularly large, regional HCPs that involve numerous participants and address landscape-level conservation of species and habitats. By preemptively excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Furthermore, an HCP application must itself be consulted upon. While this consultation will not look specifically at the issue of adverse modification to critical habitat, unless critical habitat has already been designated within the proposed plan area, it will determine if the HCP jeopardizes the species in the plan area. The jeopardy analysis is similar to the analysis of adverse modification to critical habitat. In addition, Federal actions not covered by the HCP in areas occupied by listed species would still require consultation under section 7 of the Act. HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs and assure the long-term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5 Point Policy for HCPs (64 FR 35242). Such assurances are typically not provided by section 7 consultations which, in accordance with the Provisions of the Act, are limited to requiring that the specific action being consulted upon not jeopardize the continued existence of the species. Thus, a consultation typically does not accord the lands it covers the extensive benefits an HCP provides. The development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide the conservation efforts and assist in species conservation, and the creation of innovative solutions to conserve species while allowing for development.

The Western Riverside MSHCP seeks to accomplish the goals of protecting, restoring, monitoring, managing, and enhancing the habitat to benefit the conservation of *Atriplex coronata* var. *notatior* through the implementation of specific conservation objectives. Excluding non-Federal lands within the MSHCP from the proposed critical habitat will provide benefits, as follows: (1) Exclusion of the lands from the final designation will allow us to continue working with the participants in a spirit of cooperation and partnership; (2) other jurisdictions, private landowners, and other entities will see the benefit of working cooperatively with us to develop HCPs, which will provide the basis for future opportunities to conserve species and their essential habitat.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

The Western Riverside MSHCP includes *Atriplex coronata* var. *notatior* as a covered species. The educational benefits of critical habitat, including informing the public of areas that are essential for the long-term survival and conservation of the species is still accomplished from material provided on our Web site and through public notice and comment procedures required to establish the Western Riverside MSHCP. We have also received input from the public through the public participation that occurs in the development of the Western Riverside MSHCP. For these reasons, we believe proposing critical habitat has little additional benefit in areas covered by the Western Riverside MSHCP. Therefore, we are excluding these lands from critical habitat. We do not believe that this exclusion would result in the extinction of the species because the essential habitat will be conserved in accordance with the provisions of the Western Riverside MSHCP.

Economic Analysis

An analysis of the economic impacts of possible designation of critical habitat for *Atriplex coronata* var. *notatior* is being prepared. 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://carlsbad.fws.gov/* or by contacting the Carlsbad Fish and Wildlife Office directly (see **ADDRESSES** section).

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 three appropriate independent specialists regarding this determination. The purpose of such review is to ensure that our decision on critical habitat is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposal immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the determination regarding critical habitat.

We will consider all comments and information received during the comment period on this proposal, and the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this determination, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (see **ADDRESSES** section). We will schedule public hearings on this determination, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the decision? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is significant in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a

draft economic analysis of this proposed action. We will use this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, 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 Regulatory Flexibility Act (RFA) to require Federal agencies to provide a 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, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the Act and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation for an additional 60 days. We will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

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. This proposed rule to designate critical habitat for *Atriplex coronata* var. *notatior* is a significant regulatory action under Executive Order 12866 in that it may raise novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, 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; AFDC 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.''

Critical habitat, if designated, 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 who receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because no areas are proposed for critical habitat. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Takings

In accordance with Executive Order 12630 (''*Government Actions and Interference with Constitutionally Protected Private Property Rights*''), this rule is not anticipated to have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or 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. Due to current public knowledge of the species' protections we do not anticipate that property values will be affected by the critical habitat designation. However, we have not yet completed the economic analysis for this proposed rule. Once the

economic analysis is available, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI policy, we requested information from, and coordinated development of, this proposal with appropriate State resource agencies in California. The exclusion of critical habitat in areas currently occupied by *Atriplex coronata* var. *notatior* imposes no additional restrictions to those currently in place and, therefore, has no incremental impact on State and local governments and their activities. The exclusion may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have excluded critical habitat in accordance with the provisions of the Endangered Species Act. This proposal uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Atriplex coronata* var. *notatior.*

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. 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

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. 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 in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of *Atriplex coronata* var. *notatior.*

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The primary author of this package is the staff of the Carlsbad Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h) revise the entry for ''*Atriplex coronata* var. *notatior*'' under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Atriplex coronata var. notatior.	San Jacinto Valley crownscale.	U.S.A. (CA)	*Chenopodiaceae—Goosefoot Family.*	E	650	17.97(b)	NA
*	*	*	*	*	*		*

* * * * *

3. Amend part 17 by adding a new § 17.97 to read as follows:

§ 17.97 Species for which critical habitat is prudent but not designated.

This section includes animal and plant species for which we have determined critical habitat to be prudent, but for which we did not designate critical habitat under the Act for policy and statutory reasons. We identify these species, their primary constituent elements, and the specific habitat areas essential to their conservation to further public awareness and conservation efforts.

(a) [Reserved.]

(b) *Plants.* This paragraph (b) identifies the primary constituent elements and specific habitat areas essential to the conservation of plant species for which we determined critical habitat to be prudent but did not designate for policy and statutory reasons. We will list these species in the same order as they appear in § 17.12(h).

(1) Family Chenopodiaceae: *Atriplex coronata* var. *notatior* (San Jacinto Valley crownscale).

(i) Lands determined to be essential to the conservation of *Atriplex coronata* var. *notatior* are depicted for Riverside County, California, on the map in paragraph (b)(1)(iii)(B) of this section.

(ii) The primary constituent elements of critical habitat for *Atriplex coronata* var. *notatior* are:

(A) Seasonal wetland habitats, including floodplains and vernal pools, and the natural hydrologic processes upon which these habitats depend.

(B) Vegetation communities, including alkali playa, alkali scrub, and alkali grassland habitats, within which the taxon is known to occur.

(C) Slow-draining alkali soils with a hard pan layer that provides for a perched water table, including the Willows, Domino, Traver, Waukena, and Chino Soils Series.

(iii) Lands that have been determined to be essential to the conservation of *Atriplex coronata* var. *notatior* and that have been excluded from critical habitat designation pursuant to section 4(b)(2) of the Act are described below.

(A) All essential lands within the boundaries of the Western Riverside Multiple Species Habitat Conservation Plan. This plan may be obtained by going to the Riverside County Integrated Project website (*http://www.rcip.org/conservation.htm*).

(B) *Note:* Map of essential habitat for *Atriplex coronata* var. *notatior* follows:

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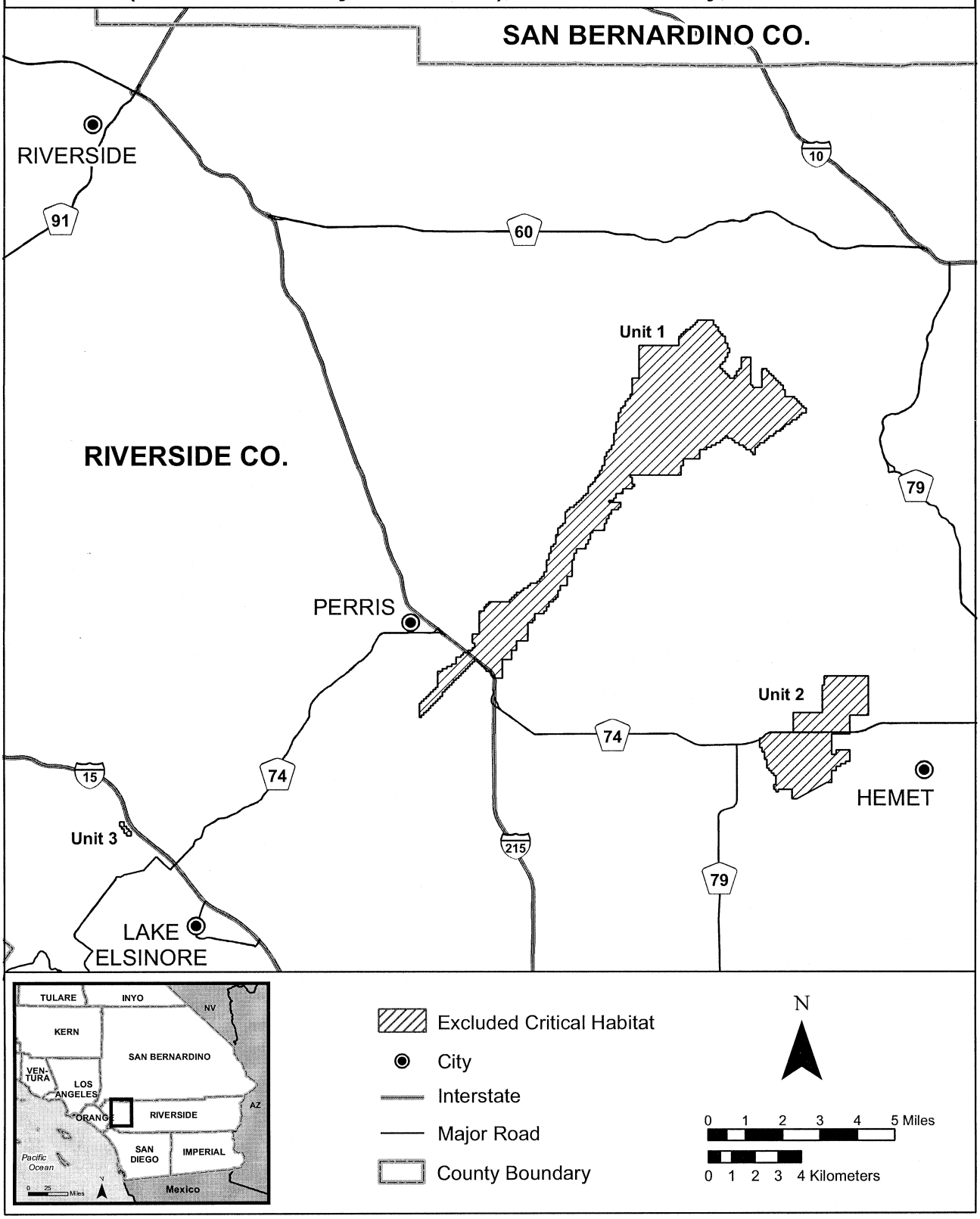
Essential Habitat Excluded as Critical Habitat for *Atriplex coronata var. notatior* (San Jacinto Valley Crownscale), Riverside County, California



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(2) [Reserved.]

Dated: September 30, 2004.

Julie McDonald,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–22395 Filed 10–5–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT84

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Arkansas River Basin Population of the Arkansas River Shiner

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Arkansas River Basin population of the Arkansas River Shiner (*Notropis girardi*) pursuant to the Endangered Species Act of 1973, as amended (Act). Limited new information on the biological needs of the Arkansas River Shiner has become available since critical habitat for the Arkansas River Shiner was published on April 4, 2001 (66 FR 18002). However, this rule is being proposed pursuant to a court order issued in September 2003, vacating critical habitat established for the Arkansas River Basin population of the Arkansas River Shiner and remanding the previous designation of critical habitat for preparation of a new analysis of the economic and other effects of the designation (*New Mexico Cattle Growers Association* et al. v. *Norton*, et al. *Civ. No. 02–0461*).

We propose to designate as critical habitat a total of approximately 2,002 kilometers (1,244 miles) of linear distance of rivers, including 91.4 meters (300 feet) of adjacent riparian areas measured laterally from each bank. This distance includes areas that we are proposing to exclude which is described further in the proposed rule below. The areas that we have determined to be essential to the conservation of the Arkansas River Shiner include portions of the Canadian River (often referred to as the South Canadian River) in New Mexico, Texas, and Oklahoma, the Beaver/North Canadian River of Oklahoma, the Cimarron River in Kansas and Oklahoma, and the Arkansas River in Arkansas, Kansas, and Oklahoma.

In developing this proposal, we evaluated those lands determined to be essential to the conservation of the Arkansas River Shiner to ascertain if any specific areas would be appropriate for exclusion from the final critical habitat designation pursuant to section 4(b)(2) of the Act. On the basis of our preliminary evaluation, we believe that the benefits of excluding the Beaver/North Canadian River of Oklahoma (Unit 2) and the Arkansas River in Arkansas, Kansas, and Oklahoma (Unit 4), from the final critical habitat for the Arkansas River Shiner outweigh the benefits of their inclusion. As noted in the ''Public Comments Solicited'' section below, we are seeking comments on our prelimary 4(b)(2) analysis that is contained within this rule.

If this proposal is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity authorized, funded, or carried out by any Federal agency. As required by section 4 of the Act, we will consider the economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat.

We hereby solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the proposed designation. We may revise this proposal prior to final designation to incorporate or address new information received during public comment periods.

DATES: We will accept comments until April 30, 2005. The Act provides for a public hearing on this proposal, if requested. Given the high likelihood of such requests, we intend to hold three public hearings, one in central Oklahoma, one in southwest Kansas and one in Texas. The specific times, dates, and locations for those hearings will be announced in the **Federal Register** in the coming months.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, Oklahoma Ecological Services Office, U.S. Fish and Wildlife Service, 222 South Houston, Tulsa, Oklahoma 74127–8909.

2. You may hand-deliver written comments and information to our Oklahoma Office, at the above address, or fax your comments to 918/581–7467.

3. You may send your comments by electronic mail (e-mail) to *r2arshinerch@fws.gov.* For directions on how to submit electronic filing of comments, see the ''Public Comments Solicited'' section.

All comments and materials received, as well as supporting documentation used in preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jerry Brabander, Field Supervisor, Oklahoma Office (telephone 918/581–7458; facsimile 918/581–7467).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. On the basis of public comment, during the development of the final rule we may find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2), or not appropriate for exclusion; in all of these cases, this information would be incorporated into the final designation. We particularly seek comments concerning:

(1) The reasons why any areas included in this proposal should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to the designation;

(2) Specific information on the amount and distribution of Arkansas River Shiner habitat, and which habitat or habitat components are essential to the conservation of this species and why;

(3) Information on the status, viability, and distribution of the Arkansas River Shiner in the Cimarron River in Kansas and Oklahoma;

(4) Comments or information related to our determination to include the adjacent riparian area (*i.e.*, 300-feet on either side of the stream bank) as proposed critical habitat;

(5) Land use designations and current or planned activities in or adjacent to the areas proposed and their possible impacts on proposed critical habitat;

(6) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation, particularly any impacts on small entities;

(7) Two areas previously designated as critical habitat (the Beaver/North Canadian River of Oklahoma (Unit 2) and portions of the Arkansas River in Arkansas, Kansas, and Oklahoma (Unit 4), although still considered essential for the conservation of the Arkansas River Shiner, are currently proposed for exclusion from critical habitat because we believe the benefit of excluding these areas outweighs the benefit of including them. We specifically solicit comment on the inclusion

or exclusion of such areas and: (a) Whether these areas are essential; (b) whether these areas warrant exclusion; (c) the basis for excluding these areas as critical habitat (section 4(b)(2) of the Act); and (d) whether the preliminary 4(b)(2) analysis contained within this rule is adequate to justify an exclusion and/or any other factors that we should take into consideration; and

(8) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit electronic comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: RIN 1018–AT84'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Oklahoma Ecological Services Office at phone number 918–581–7458. Please note that the e-mail address, *r2arshinerch@fws.gov* will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has changed since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous amounts of agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the Act can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.'' Currently, only 445 species or 36 percent of the 1,244 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,244 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that a recent 9th Circuit judicial opinion, *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service*, has invalidated the Service's regulation defining destruction or adverse modification of critical habitat. We are currently reviewing the decision to determine what effect it may have on the outcome of consultations pursuant to section 7 of the Act.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA). None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

The Arkansas River Shiner is a small, robust minnow with a small, dorsally flattened head, rounded snout, and small subterminal mouth (located near the head end of the body but not at the extreme end) (Miller and Robison 1973; Robison and Buchanan 1988). Dorsal (back) coloration tends to be light tan, with silvery sides gradually grading to white on the belly. Adults typically

attain a maximum length of 51 millimeters (2 inches). Dorsal, anal, and pelvic fins all have eight rays, and there is a small, black chevron (v-shaped mark) usually present at the base of the caudal (tail) fin.

The Arkansas River Shiner was first described based on a fish collection in 1926 from the Cimarron River northwest of Kenton, Cimarron County, Oklahoma (Hubbs and Ortenburger 1929). Historically, the Arkansas River Shiner was widespread and abundant throughout the western portion of the Arkansas River Basin in Kansas, New Mexico, Oklahoma, and Texas. This species has disappeared from more than 80 percent of its historical range and is now almost entirely restricted to about 820 km (508 mi) of the Canadian River in Oklahoma, Texas, and New Mexico (Larson *et al.* 1991; Pigg 1991). A small aggregation of Arkansas River Shiner still persists in the Cimarron River in Oklahoma and Kansas, based on the collection of 24 individuals since 1985. The Arkansas River Shiner was last captured from the Cimarron River in August of 2004 near Guthrie, Oklahoma, by SWCA Environmental Consultants (Stuart Leon, U.S. Fish and Wildlife Service, *in litt.* 2004). A remnant population also may persist in the Beaver/North Canadian River of Oklahoma, based on collection of only four individuals since 1990 (Larson *et al.* 1991; Jimmie Pigg, Oklahoma Department of Environmental Quality, pers. comm., 1993). The Arkansas River Shiner is no longer believed to occur in the Arkansas River in Arkansas, Kansas, and Oklahoma; a loss of over 1,240 km (770 mi) of previously occupied habitat. However, an accurate assessment of Arkansas River Shiner populations in the Arkansas and Beaver/North Canadian Rivers is difficult because the populations are likely so small, if present, that individuals escape detection during routine, one-time surveys.

The decline of the Arkansas River Shiner throughout its historical range is primarily the result of modification of the duration and timing of stream flows and inundation by impoundments, channel drying by water diversion and groundwater mining, stream channelization, and introduction of nonindigenous plant and animal species. Additional information on the biology and status of this species, as well as a thorough discussion of the threats to the species, can be found in the November 23, 1998, final listing determination (63 FR 64772) and the final critical habitat determination (66 FR 18002; April 4, 2001). Biological factors relevant to the species' habitat needs are discussed in the ''Primary Constituent Elements'' section of this proposed rule.

Previous Federal Action

We published a proposed rule to list the Arkansas River Basin population of the Arkansas River Shiner as endangered and invited public comment on August 3, 1994 (59 FR 39532). A non-native population of the Arkansas River Shiner that has become established in the Pecos River was not included in that proposal. We reopened the comment period from January 6, 1995, to February 3, 1995 (60 FR 2070), to accommodate three public hearings. Following a moratorium on issuing final listings or critical habitat designations that ended on April 26, 1996, we again reopened the comment period on the proposal on December 5, 1997 (62 FR 64337). We published the final rule listing the Arkansas River Basin population of the Arkansas River shiner as a threatened species on November 23, 1998 (63 FR 64772). A recovery plan for this species has not yet been completed.

At the time of listing, we concluded that designation of critical habitat for the Arkansas River Shiner was not prudent because such designation would not benefit the species. As part of a settlement order of February 16, 2000, in *Center for Biological Diversity* v. *Bruce Babbitt, et al.* C99–3202 SC, we agreed to reconsider the question of whether critical habitat would be prudent; and, if designation of critical habitat were prudent, we agreed to subsequently propose designation of critical habitat for the Arkansas River Basin population of the Arkansas River Shiner by June 23, 2000. Our proposed designation of critical habitat for the Arkansas River Shiner was published in the **Federal Register** on June 30, 2000 (65 FR 40576). On August 15, 2000 (65 FR 49781), we published a notice in the **Federal Register** extending the comment period on the proposed rule and draft environmental assessment and announcing the availability of the draft economic analysis for public review and comment. The final comment period was open until October 16, 2000. After review of all comments received in response to the proposed rule, we published a final rule designating critical habitat for the Arkansas River Basin population of the Arkansas River Shiner (66 FR 18002; April 4, 2001).

On April 25, 2002, the New Mexico Cattle Growers Association and 16 other plaintiffs filed a complaint in United States District Court for the District of New Mexico for alleged violations of the Act, the Administrative Procedure Act, and NEPA. A decision in that case was issued by Senior U.S. District Judge C. LeRoy Hansen in September of 2003. In that Memorandum Opinion, critical habitat for the Arkansas River Shiner was vacated and the Service was ordered to complete a proposed rulemaking to redesignate critical habitat by September 30, 2004. A final rulemaking is due one year later.

This proposal relies upon the best scientific and commercial data available to us, including the biological and habitat information described in the previous final rules, and recognized principles of conservation biology. Accordingly, this proposal differs from the previous critical habitat designation for the Arkansas River Shiner and includes only those areas we currently consider essential to the conservation of the species.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are 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 government or public access to private lands.

To be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the

primary constituent elements, as defined at 50 CFR 424.12(b)).

Occupied habitat may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).)

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographic area occupied by the species.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (P.L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Section 4 of the Act requires that we designate critical habitat on the basis of what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(1)(A) of the Act, in determining areas that are essential for the conservation of the Arkansas River Shiner, we used the best scientific and commercial data available. These included data from research and survey observations published in peer-reviewed articles and that were conducted by the Service and others; conservation measures described in the final listing determination (63 FR 64772) and in the *Issue 8: Recovery* section of the prior final critical habitat determination (66 FR 18002); our recovery outline; regional Geographic Information System (GIS) watershed and species coverages; and data compiled in the Oklahoma Natural Heritage Inventory Database. In addition, information provided in comments on the proposed critical habitat designation and draft economic analysis will be evaluated and considered in the development of the final designation for the Arkansas River Shiner. Although a recovery plan has not yet been prepared for this species, the areas we have proposed as critical habitat represent those that currently support viable populations of the Arkansas River Shiner or are areas where we have data that the Arkansas River Shiner is still extant (i.e. the Cimarron River). Full recovery of the species likely will require conservation of existing populations and establishment of at least one additional viable population in an additional stream drainage within the historic range of the Arkansas River Shiner.

Physical features were identified using U.S. Geological Survey (USGS) 7.5′ quadrangle maps. River reach distances, as noted in Table 1 below, were caculated from TIGER 2000 water line and water polygon Geographic Information Systems files.

We request that peer reviewers who are familiar with this species review the proposed rule (see ''Peer Review'' section below) in order to ensure that we have identified those areas that are essential for the conservation of the Arkansas River Shiner and avoid designating unsuitable habitat inappropriately.

This proposed designation does not include all areas previously designated as critical habitat for the Arkansas River Shiner (66 FR 18002; April 4, 2001). Some areas that were included in the previous designation are not being included in this proposal because they no longer meet the definition of critical habitat based on recent information concerning habitat quality and lack of primary constituent elements. Specifically, and as explained in further detail below, the Arkansas River upstream of Larned, Kansas, is not included in this proposed designation. Portions of the Beaver/North Canadian and the lower reaches of the Arkansas River between the cities of Larned and the Kansas/Oklahoma State line, are proposed for exclusion from this critical habitat designation as explained under the ''*Relationship of Section 4(b)(2) of the Act to Arkansas River Shiner Critical Habitat*'' section below.

During 2000 and 2001, Wilde (2002) conducted an assessment of fish communities and aquatic habitat at 10 sites from the Beaver/North Canadian River within the area previously designated (66 FR 18002; April 4, 2001) as critical habitat (Unit 2) for the Arkansas River Shiner. No Arkansas River Shiners were encountered and habitat was considered marginal for Arkansas River Shiner (Wilde 2002). Overall, aquatic habitat in the lower reach (*i.e.*, North Canadian River) was generally swifter and deeper than that preferred by the Arkansas River Shiner in the Canadian River in Texas. Habitat in the upper reach (*i.e.*, Beaver River) was, on average, slightly swifter but comparable in depth with habitats preferred by the Arkansas River Shiner in the Canadian River in Texas. While habitat quality in the North Canadian River, previously designated as Unit 2, appears marginal, all of the primary constituent elements are present. However, we are uncertain if the Arkansas River Shiner still inhabits this reach. Reestablishing Arkansas River Shiner in this reach would involve some

habitat restoration to achieve more optimal conditions for the Arkansas River Shiner.

Habitat improvements due to increased stream flow previously anticipated to occur in the upper reaches of the Arkansas River in Kansas, formerly designated as part of Unit 4, have failed to occur. Much of the Arkansas River upstream of Great Bend, Kansas, continues to be dewatered for significant periods of time. Examination of information (USGS 2004) for the Arkansas River in Kansas revealed that average annual streamflow values, as measured at Syracuse, Garden City, and Dodge City, were considerably higher during the period from 1998 to 2000 than they were from 2001 to 2003. Consequently, we no longer believe this reach provides all of the primary constituent elements needed by the Arkansas River Shiner. We are not including it in this proposal because we do not believe the area meets the definition of critical habitat. Habitat in the lower reaches of the Arkansas River between the cities of Great Bend and Wichita, Kansas, remains suitable for the Arkansas River Shiner. While streamflows were much lower during the period from 2001 to 2003 than they were from 1998 to 2000, streamflows were consistently higher than those measured at the more upstream gauging stations. Unfortunately, the Arkansas River Shiner no longer persists in the Arkansas River. It is not known with certainty why the species is no longer present in the Arkansas River; however, it is likely due to a combination of factors including streamflow alterations and water quality-related issues, the combination of which have precluded successful reproduction. Surveys have been conducted within the past five years with consistent negative results reported.

We intend to promote conservation and recovery of the Arkansas River Shiner in these two reaches through the use of other tools, which may include reestablishment of the Arkansas River Shiner through the provisions of section 10(j) of the Act—experimental populations. See our analysis under ''*Relationship of Section 4(b)(2) of the Act to Arkansas River Shiner Critical Habitat*'' section of this rule.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These features include, but are not limited to, space for individual and population growth and for normal behavior; food, water, light, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring; and habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

The specific biological and physical features, referred to as the primary constituent elements, that provide for the physiological, behavioral, and ecological requirements of the Arkansas River Shiner include adequate spawning flows over sufficient distances; habitat for food organisms; appropriate water quality; a natural flow regime; rearing and juvenile habitat appropriate for growth and development to adulthood; and suitable habitat (*e.g.*, sufficient flows and lack of barriers) sufficient to allow Arkansas River Shiner to recolonize upstream habitats. Special management, such as habitat rehabilitation efforts (*e.g.*, removal or control of non-native competitors), also may be necessary over much of the area being proposed for designation. Given the large geographic range the species historically occupied, and the diverse habitats used by the various life-history stages, the specific values or conditions described for each of these habitat features may not capture all of the variability that is inherent in natural systems supporting the Arkansas River Shiner. However, the following discussion summarizes the primary constituent elements determined essential to the conservation of the Arkansas River Shiner.

The Arkansas River Shiner historically inhabited the main channels of wide, shallow, sandy-bottomed rivers and larger streams of the Arkansas River Basin (Gilbert 1980). Adult Arkansas River Shiner are uncommon in quiet pools or backwaters lacking streamflow, and almost never occur in habitats having deep water and bottoms of mud or stone (Cross 1967). Cross (1967) believed that adult Arkansas River Shiner prefer to orient into the current on the ''lee'' sides of large transverse sand ridges and prey upon food organisms washed downstream with the current.

Food

The Arkansas River Shiner is believed to be a generalized forager and feeds upon both items suspended in the water column and items lying on the substrate (Jimenez 1999; Bonner *et al.* 1997). In the Canadian River of central Oklahoma, Polivka and Matthews (1997) found that gut contents were dominated by sand/sediment and detritus (decaying organic material) with invertebrate prey being an incidental component of the diet. In the Canadian River of New Mexico and Texas, the stomach contents of Arkansas River Shiner were dominated by detritus, invertebrates, grass seeds, and sand and silt (Jimenez 1999). Invertebrates were the most important food item, followed by detrital material.

Terrestrial and semiaquatic invertebrates were consumed at higher levels than were aquatic invertebrates (Jimenez 1999). With the exception of the winter season, when larval flies were consumed much more frequently than other aquatic invertebrates, no particular invertebrate taxa dominated the diet (Bonner *et al.* 1997). Fly larvae, copepods, immature mayflies, insect eggs, and seeds were the dominant items in the diet of the non-native population of the Arkansas River Shiner inhabiting the Pecos River in New Mexico (Keith Gido, University of Oklahoma, *in litt.* 1997).

Water

Most plains streams are highly variable environments. Water temperatures, flow regimes, and overall physicochemical conditions (*e.g.*, quantity of dissolved oxygen) typically fluctuate so drastically that fishes native to these systems often exhibit life-history strategies and microhabitat preferences that enable them to cope with these conditions. Matthews (1987) classified several species of fishes, including the Arkansas River Shiner, based on their tolerance for adverse conditions and selectivity for physicochemical gradients. The Arkansas River Shiner was described as having a high thermal and oxygen tolerance, indicating a high capacity to tolerate elevated temperatures and low dissolved oxygen concentrations (Matthews 1987). Observations from the Canadian River in New Mexico and Texas revealed that dissolved oxygen concentrations, conductivity, and pH rarely influenced habitat selection by the Arkansas River Shiner (Wilde *et al.* 2000). Arkansas River shiners were collected over a wide range of conditions—water temperatures from 0.4 to 36.8° Celsius (32.7 to 98.2° Fahrenheit), dissolved oxygen from 3.4 to 16.3 parts per million, conductivity (total dissolved solids) from 0.7 to 14.4 millisiemens per centimeter, and pH from 5.6 to 9.0.

In the Canadian River in central Oklahoma, Polivka and Matthews (1997) found that Arkansas River Shiner

exhibited only a weak relationship between the environmental variables they measured and the occurrence of the species within the stream channel. Water depth, current, dissolved oxygen, and sand ridge and midchannel habitats were the environmental variables most strongly associated with the distribution of adult Arkansas River Shiner within the channel. Similarly, microhabitat selection by Arkansas River Shiner in the Canadian River in New Mexico and Texas was influenced by water depth, current velocity, and, to a lesser extent, water temperature (Wilde *et al.* 2000). Arkansas River shiners generally occurred at mean water depths between 17 and 21 centimeters (cm) (6.6–8.3 inches (in)) and current velocities between 30 and 42 cm (11.7 and 16.4 in) per second. Juvenile Arkansas River Shiner associated most strongly with current, conductivity, and backwater and island habitat types (Polivka and Matthews 1997).

Space for Individual and Population Growth and for Normal Behavior

Wilde *et al.* (2000) found no obvious selection for or avoidance of any particular habitat type (*i.e.*, main channel, side channel, backwaters, and pools) by Arkansas River Shiner. Arkansas River shiners did tend to select side channels and backwaters slightly more than expected based on the availability of these habitats (Wilde *et al.* 2000). Likewise, they appeared to make no obvious selection for, or avoidance of, any particular substrate type. Substrates (*i.e.* the river bed) in the Canadian River in New Mexico and Texas were predominantly sand; however, the Arkansas River Shiner was observed to occur over silt slightly more than expected based on the availability of this substrate (Wilde *et al.* 2000).

Successful reproduction by the Arkansas River Shiner appears to be strongly correlated with streamflow. Moore (1944) believed the Arkansas River Shiner spawned in July, usually coinciding with elevated flows following heavy rains associated with summertime thunderstorms. Bestgen *et al.* (1989) found that spawning in the non-native population of Arkansas River Shiner in the Pecos River of New Mexico generally occurred in conjunction with releases from Sumner Reservoir. However, recent studies by Polivka and Matthews (1997) and Wilde *et al.* (2000) neither confirmed nor rejected the hypothesis that elevated streamflow triggered spawning in the Arkansas River Shiner.

Arkansas River shiners are in-channel, open-water, broadcast spawners that release their eggs and sperm over an unprepared substrate (Platania and Altenbach 1998; Johnston 1999). Examination of Arkansas River Shiner gonadal development between 1996 and 1998 in the Canadian River in New Mexico and Texas demonstrated that the species undergoes multiple, asynchronous (not happening at the same time) spawns in a single season (Wilde *et al.* 2000). The Arkansas River Shiner appears to be in peak reproductive condition throughout the months of May, June, and July (Wilde *et al.* 2000; Polivka and Matthews 1997); however, spawning may occur as early as April and as late as September. Arkansas River shiners may, on occasion, spawn in standing waters (Wilde *et al.* 2000), but it is unlikely that such events are successful.

Both Moore (1944) and Platania and Altenbach (1998) described behavior of Arkansas River Shiner eggs. The fertilized eggs are nonadhesive and semibuoyant. Platania and Altenbach (1998) found that spawned eggs settled to the bottom of the aquaria where they quickly absorbed water and expanded. Upon absorbing water, the eggs became more buoyant, rose with the water current, and remained in suspension. The eggs would sink when water current was not maintained in the aquaria. This led Platania and Altenbach (1998) to conclude that the Arkansas River Shiner and other plains fishes likely spawn in the upper to mid-water column during elevated flows. Spawning under these conditions would allow the eggs to remain suspended during the 10-to 30-minute period the eggs were non-buoyant. Once eggs became buoyant, they would remain suspended in the water column as long as current was present.

In the absence of sufficient streamflows, the eggs would likely settle to the channel bottom, where silt and shifting substrates would smother the eggs, hindering oxygen uptake and causing mortality of the embryos. Spawning during elevated flows appears to be an adaptation that likely increases survival of the embryo and facilitates dispersal of the young. Assuming a conservative drift rate of 3 km/hour, Platania and Altenbach (1998) estimated that the fertilized eggs could be transported 72–144 km (45–89 mi) before hatching. Developing larvae could then be transported up to an additional 216 km (134 mi) before they were capable of directed swimming movements. Bonner and Wilde (2000) speculate that 218 km (135 mi) may be the minimum length of unimpounded river that allows for the successful completion of Arkansas River Shiner life history, based on their observations in the Canadian River in New Mexico and Texas.

Rapid hatching and development of the young is likely another adaptation in plains fishes that enhances survival in the harsh environments of plains streams. Arkansas River shiner eggs hatch in 24–48 hours after spawning, depending upon water temperature (Moore 1944; Platania and Altenbach 1998). The larvae are capable of swimming within 3–4 days; they then seek out low-velocity habitats, such as backwater pools and quiet water at the mouths of tributaries where food is more abundant (Moore 1944).

Evidence from Wilde *et al.* (2000) indirectly supports the speculation by Cross *et al.* (1985) that the Arkansas River Shiner initiates an upstream spawning migration. Whether this represents a true spawning migration or just a general tendency in these fish to orient into the current and move upstream, perhaps in search of more favorable environmental conditions, is unknown (Wilde *et al.* 2000). Regardless, strong evidence suggested the presence of a directed, upstream movement by the Arkansas River Shiner over the course of a year.

Introductions of nonindigenous species can have a significant adverse impact on Arkansas River Shiner populations under certain conditions. The morphological characteristics, population size, and ecological preferences exhibited by the Red River shiner (*Notropis bairdi*), a species endemic to the Red River drainage, suggest that it competes with the Arkansas River Shiner for food and other essential life requisites (Cross *et al.* 1983; Felley and Cothran 1981). Since its introduction, the Red River shiner has colonized much of the Cimarron River and frequently may be a dominant component of the fish community (Cross *et al.* 1983; Felley and Cothran 1981). The intentional or unintentional release of Red River shiners, or other potential competitors, into other reaches of the Arkansas River drainage by anglers or the commercial bait industry is a potentially serious threat that could drastically alter habitat availability for the Arkansas River Shiner in these reaches.

Pursuant to our regulations, we are required to identify the known physical and biological features, *i.e.*, primary constituent elements, essential to the conservation of the Arkansas River Shiner, together with a description of any critical habitat that is proposed. In identifying the primary constituent elements, we used the best available scientific and commercial data available. The primary constituent

elements determined essential to the conservation of the Arkansas River Shiner are:

(1) A natural, unregulated hydrologic regime complete with episodes of flood and drought or, if flows are modified or regulated, a hydrologic regime characterized by the duration, magnitude, and frequency of flow events capable of forming and maintaining channel and instream habitat necessary for particular Arkansas River Shiner life-stages in appropriate seasons;

(2) A complex, braided channel with pool, riffle (shallow area in a streambed causing ripples), run, and backwater components that provide a suitable variety of depths and current velocities in appropriate seasons;

(3) A suitable unimpounded stretch of flowing water of sufficient length to allow hatching and development of the larvae;

(4) Substrates of predominantly sand, with some patches of silt, gravel, and cobble;

(5) Water quality characterized by low concentrations of contaminants and natural, daily and seasonally variable temperature, turbidity, conductivity, dissolved oxygen, and pH;

(6) Suitable reaches of aquatic habitat, as defined by primary constituent elements 1 through 5 above, and adjacent riparian habitat sufficient to support an abundant terrestrial, semiaquatic, and aquatic invertebrate food base; and

(7) Few or no predatory or competitive non-native fish species present.

All areas proposed as critical habitat for the Arkansas River Shiner are within the historic range occupied by the species and contain one or more of the primary constituent elements essential for its conservation.

Criteria Used To Define Critical Habitat

We are proposing to designate critical habitat within portions of the Canadian and Cimarron Rivers and their associated riparian zones that we determine are essential to the conservation of the Arkansas River Shiner. We considered several criteria in the selection and proposal of Arkansas River Shiner critical habitat. We first determined the occupancy status of the areas. All of the stream reaches historically known to support the Arkansas River Shiner at the time of listing, including portions of the Arkansas, Cimarron, Beaver/North Canadian, and Canadian Rivers, are considered essential habitat for this species. However, as discussed in the ''Relationship of Section 4(b)(2) of the Act to Critical Habitat for the Arkansas River Shiner'' section below, we are proposing to exclude those portions of the Arkansas and the Beaver/North Canadian Rivers determined to be essential for the conservation of the Arkansas River Shiner. These areas have the primary constituent elements described above and, as such, provide suitable habitat as defined in several recent scientific studies including Platania and Altenbach 1998, Polivka and Matthews 1997, and Wilde *et al.* 2000. We solicited information from knowledgeable biologists and reviewed available information pertaining to Arkansas River Shiner biology and life history. We then evaluated suitable habitat as defined by the primary constituent elements discussed above to assess whether they may require special management considerations or protection (see ''Special Management Considerations or Protection'' section below).

We also reviewed the overall approach to the conservation of the species undertaken by local, State, tribal, and Federal agencies and private individuals and organizations since the species' listing in 1998. For example, we previously designated an area (Unit 4) that was within the historic distribution of the Arkansas River Shiner but was believed to be unoccupied. As stated in the final rule (66 FR 18002; April 4, 2001) this area does not lack protection. The Kansas Department of Wildlife and Parks (KDWP) has designated critical habitat for the Arkansas River Shiner in accordance with Kansas State law. Portions of the mainstem Cimarron, Arkansas, South Fork Ninnescah, and Ninnescah Rivers have been designated as critical habitat for the Arkansas River Shiner in Kansas. A permit is required by the State of Kansas for public actions that have the potential to destroy State-listed individuals or their State designated critical habitat. Subject activities include any publicly funded or State or federally assisted action, or any action requiring a permit from any other State or Federal agency. Violation of the permit constitutes an unlawful taking, a Class A misdemeanor, and is punishable by a maximum fine of $2,500 and confinement for a period not to exceed 1 year.

We repropose the designation on National Park Service lands in the Lake Meredith National Recreation Area. In addition to federally-owned lands, we are proposing to designate critical habitat on non-Federal public lands and privately owned lands including lands owned by the Texas Parks and Wildlife Department, Oklahoma Department of Wildlife Conservation, and The Nature Conservancy. All non-Federal lands proposed as critical habitat meet the definition of critical habitat under 16 U.S.C. 1532(5)(A)(i) of the Act in that they are within the geographical area occupied by the species, are essential to the conservation of the species, and may require special management consideration or protection. As noted below, we are proposing to exclude the Beaver/North Canadian River in Oklahoma and the lower Arkansas River in Kansas. As discussed in this rule, we believe that the Arkansas River Shiner is extirpated from these river segments; however, we consider these areas to be essential to the conservation of the Arkansas River Shiner primarily for future restoration effects.

Important considerations in selection of areas included in the proposed critical habitat designation include factors specific to each river system, such as size, connectivity, and habitat diversity, as well as rangewide recovery considerations, such as genetic diversity and having populations of the Arkansas River Shiner established throughout major portions of its historic range. Each area contains stream reaches with interconnected waters so that individual Arkansas River shiners can move between areas, at least during certain flows or seasons. The ability of the fish to repopulate areas where they have been depleted or extirpated is vital to recovery to help stabilize the population and better ensure its future persistence. Some areas include stream reaches that do not exhibit optimal Arkansas River Shiner habitat, but provide movement corridors. Additionally, these reaches play a vital role in the overall health of the aquatic ecosystem and, therefore, the integrity of upstream and downstream Arkansas River Shiner habitats. This proposed critical habitat designation reflects the need for areas of sufficient stream length to provide habitat for Arkansas River Shiner populations large enough to be self-sustaining over time, despite fluctuations in local conditions.

In considering this proposed designation, we took into account that preferred habitat for the Arkansas River Shiner is predominantly the mainstems of larger plains rivers. The best scientific information available indicates that recovery of this species will depend on conservation of relatively long stretches of large rivers (Platania and Altenbach 1998) within Arkansas River Shiner historic range. Historically, the species has been documented from several smaller tributaries (*e.g.*, Skeleton Creek, Wildhorse Creek, and others) to these rivers (Larson *et al.* 1991). Examination of the collection records provided in Larson *et al.* (1991) shows that about 53 percent of the reported capture dates for the Arkansas River Shiner in these smaller tributaries occurred during the months of June and July. Another 18 percent occurred during the months of May and August. Consequently, we believe that these tributaries are

occupied only during certain seasons during higher flows and do not represent optimal habitat. These seasonally occupied habitats may be important feeding, nursery, or spawning areas and all tributaries, no matter their size, are important in contributing flows to the critical habitat reaches. Federal actions that may substantially reduce these flows may adversely affect critical habitat and will be subject to consultation provisions outlined in section 7 of the Act. Because newly hatched Arkansas River Shiner seek mouths of tributaries where food is more abundant (Moore 1944), this designation (see ''Lateral Extent of Critical Habitat'' section) includes small sections of the tributaries near their confluence, which are important rearing areas for larval Arkansas River Shiner.

As we stated in the listing rule (63 FR 64772; November 23, 1998), transplantation of the Arkansas River Shiner from the Pecos River will be evaluated as a means to recover the Arkansas River Shiner in unoccupied portions of its historic habitat. In addition, our recovery outline for the species identified re-establishing the Arkansas River Shiner into suitable unoccupied historic habitat as a crucial component of recovery. In accordance with the outline, we have undertaken steps to develop and document captive propagation techniques for the Arkansas River Shiner. In November 1999, with the assistance of the New Mexico Game and Fish Department, we collected over 300 Arkansas River Shiner from the Pecos River. These fish were transported to the Tishomingo National Fish Hatchery in Oklahoma where hatchery personnel were successful in inducing spawning of the species and coaxing the juveniles to feed in captivity. Future restoration efforts will undoubtedly occur, pending completion of an approved recovery plan and genetic work to determine the suitability of using Arkansas River Shiner from the Pecos River population in transplantation efforts.

Restoration of Arkansas River Shiner populations to additional portions of their historical range significantly reduces the likelihood of extinction due to natural or manmade factors, such as the introduction of the Red River shiner, pollution episodes, or a prolonged period of low or no flow, that might otherwise further reduce population size. For example, in July of 2003, an unintentional but unauthorized discharge of livestock waste entered the Canadian River upstream of Oklahoma City, Oklahoma. In the ensuing fish kill, an estimated 11,000 Arkansas River Shiner perished. If recovery actions fail to reverse Arkansas River Shiner declines in the Canadian River, the species' vulnerability to similar catastrophic events would increase. A vital recovery component for this species likely will involve establishment of secure, self-sustaining populations in habitats from which the species has been extirpated.

Special Management Considerations or Protection

As discussed in the final listing rule and throughout this proposed critical habitat rule, the Arkansas River Shiner and its habitat are threatened by a number of factors including, but not limited to, stream flow modification, habitat loss by inundation, channel drying by water diversion and groundwater mining, stream channelization, water quality degradation, and introduction of nonindigenous plant and animal species. While many of these threats operate concurrently and cumulatively with one another and with natural disturbances like drought, habitat loss and modification represents the most significant threat to the Arkansas River Shiner. Consequently, each area proposed for designation as critical habitat may require some level of management and/or protection to address current and future threats to the Arkansas River Shiner and maintain the primary constituent elements essential to its conservation to ensure the overall recovery of the species.

The range and numbers of the species has already been much reduced. Consequently, the remaining fragmented sections are more likely to be affected by influences from other factors such as drought, water withdrawals, and permitted and unpermitted wastewater discharges. Once the habitats are isolated, other aggregations of Arkansas River Shiner can no longer disperse into these reaches and help maintain or restore these populations. Isolation and segregation caused by habitat fragmentation can lead to a reduction in overall genetic diversity. Lande (1999) identified reduced genetic diversity as one of several factors influencing extinction in small populations. Therefore, to conserve and recover the fishes to the point where they no longer require the protection of the Act and may be delisted, it is important to maintain and protect all remaining genetically diverse populations of this species within its historic range.

Within the historic range of the Arkansas River Shiner, considerable reaches of formerly occupied habitat have been inundated by reservoirs. While these losses are permanent and cannot reasonably be restored, management of water releases, such as those from Ute Reservoir, can be carried out in a manner that minimizes any adverse impacts and facilitates maintenance of Arkansas River Shiner habitat. Removal of the non-native salt cedar (*Tamarix* spp.) also can free additional water that, with management, can further provide for the habitat needs of the Arkansas River Shiner. Streamflow management combined with control of salt cedar can retard the channel narrowing that often occurs following a reduction in streamflow and can improve Arkansas River Shiner habitat.

In other portions of the historic range, a lack of reservoir releases and groundwater mining has drastically reduced streamflows necessary for maintenance of Arkansas River Shiner habitat. In these areas, control of salt cedar and enhanced water conservation, for both municipal and agricultural uses, can help ensure adequate streamflow continues to occur. Considering the amount of free-flowing habitat required to sustain Arkansas River Shiner reproduction (as discussed in the ''Primary Constituent Element'' section above), such management may be particularly beneficial in ensuring that suitable spawning, rearing, and nursery habitat persists.

Introductions of non-native species, whether intentional or accidental, often have deleterious impacts to native species. The accidental introduction of the non-native Red River shiner has negatively influenced the distribution and abundance of the Arkansas River Shiner in the Cimarron River. A further introduction into other portions of its historic range poses a considerable threat to the Arkansas River Shiner. Management efforts to eradicate the Red River shiner and eliminate or reduce the potential for additional releases of this species would be beneficial to survival of the Arkansas River Shiner.

Proposed Critical Habitat Designation

The areas we are proposing as critical habitat currently provide all of those habitat components necessary to meet the primary biological needs of the Arkansas River Shiner, as defined by the primary constituent elements. The areas proposed for designation are those river reaches most likely to substantially contribute to conservation of the Arkansas River Shiner, which when combined with future management of certain unoccupied habitats suitable for restoration efforts, will contribute to the long-term survival and recovery of the species.

Included in the proposed designation are areas that contain most, if not all, of the remaining genetic diversity of the Arkansas River Shiner within the Arkansas River Basin because the two segments in the Canadian River and the segment in the Cimarron River represent the largest, perhaps only, remaining viable aggregations of Arkansas River Shiner. The designation incorporates more than 90 percent of the currently known aggregations of Arkansas RIver Shiner in the Arkansas River Basin.

In selecting areas of critical habitat, we made an effort to avoid developed areas, such as towns and other similar lands that are not likely to contribute to Arkansas River Shiner conservation. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for the Arkansas River Shiner did not allow us to exclude all developed areas such as roads and rural developed areas or other lands. Existing features and structures within the boundaries of the mapped units, such as buildings, roads, railroads, and other urban landscaped areas removed from essential aquatic and riparian habitat, are not likely to contain the primary constituent elements essential for the conservation of the Arkansas River Shiner. Therefore, Federal actions limited to these areas would not trigger section 7 consultations, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Lateral Extent of Critical Habitat

This designation takes into account the naturally dynamic nature of riverine systems and recognizes that floodplains are an integral part of the stream ecosystem. Habitat quality within the mainstem river channels in the historical range of the Arkansas River Shiner is intrinsically related to the character of the floodplain and the associated tributaries, side channels, and backwater habitats that contribute to the key habitat features (e.g., substrate, water quality, and water quantity) in these reaches. Among other contributions, the floodplain provides space for natural flooding patterns and latitude for necessary natural channel adjustments to maintain appropriate channel morphology and geometry. A relatively intact riparian zone, along with periodic flooding in a relatively natural pattern, are important in maintaining the stream conditions necessary for long-term survival and recovery of the Arkansas River Shiner.

Human activities that occur outside the river channel can have a demonstrable effect on physical and biological features of aquatic habitats. However, not all of the activities that occur within a floodplain will have an adverse impact on the Arkansas River Shiner or its habitat. Thus, in determining the lateral extent of critical habitat along riverine systems, we considered the definition of critical habitat under the Act. That is, critical habitat must contain the elements essential to a species' conservation and must be in need of special management considerations or protection. We see no need for special management considerations or protection for the entire floodplain, and we are not proposing to designate the whole floodplain as critical habitat. However, conservation of the river channel alone is not sufficient to ensure the survival and recovery of the Arkansas River Shiner. For instance, the diet of the Arkansas River Shiner includes many species of terrestrial insects and seeds of grasses occurring in the riparian corridor (Jimenez 1999). We believe the riparian corridors adjacent to the river channel provide a reasonable lateral extent for critical habitat designation.

Riparian areas are seasonally flooded habitats (i.e., wetlands) that are major contributors to a variety of vital functions within the associated stream channel (Federal Interagency Stream Restoration Working Group 1998; Brinson *et al.* 1981). Riparian zones are essential for energy and nutrient cycling, filtering runoff, absorbing and gradually releasing floodwaters, recharging groundwater, maintaining streamflows, protecting stream banks from erosion, and providing shade and cover for fish and other aquatic species. Healthy riparian corridors help ensure water courses maintain the primary constituent elements essential to stream fishes, including the Arkansas River Shiner. Although the Arkansas River Shiner cannot be found in riparian areas when they are dry, riparian areas provide habitat during high water periods and contribute to the food base utilized by the Arkansas River Shiner.

The lateral extent (width) of riparian corridors fluctuates considerably between a stream's headwaters and its mouth. The appropriate width for riparian buffer strips has been the subject of several studies (Castelle *et al.* 1994). Most Federal and State agencies generally consider a zone 23–46 meters (m) (75–150 feet (ft)) wide on each side of a stream to be adequate (NRCS 1998; Moring *et al.* 1993; Lynch *et al.* 1985), although buffer widths as wide as 152 m (500 ft) have been recommended for achieving flood attenuation benefits (Corps 1999). In most instances, however, riparian buffer zones are primarily intended to reduce (*i.e.* buffer) detrimental impacts to the stream from sources outside the river channel. Consequently, while a riparian corridor 23–46 m (75–150 ft) in width may function adequately as a buffer, it is likely inadequate to preserve the natural processes that provide Arkansas River Shiner constituent elements.

Generally, we consider a lateral distance of 91.4 m (300 ft) on each side of the stream beyond the bankfull width to be an appropriate riparian corridor width for the preservation of Arkansas River Shiner constituent elements. The bankfull width is the width of the stream or river at bankfull discharge, *i.e.*, the flow at which water begins to leave the channel and move into the floodplain (Rosgen 1996); the bankfull discharge generally occurs every 1 to 2 years (Leopold *et al.* 1992). Bankfull discharge, while a function of the size of the stream, is a fairly consistent feature related to the formation, maintenance, and dimensions of the stream channel (Rosgen 1996).

Some developed lands within the 91.4-m (300-ft) lateral extent are not considered critical habitat because they do not contain the primary constituent elements and, therefore, are not essential to the conservation of the Arkansas River Shiner. Lands located within the boundaries of the critical habitat designation, but that do not contain any of the primary constituent elements or provide habitat or biological features essential to the conservation of the Arkansas River Shiner include: existing paved roads; bridges; parking lots; railroad tracks; railroad trestles; water diversion and irrigation canals outside of natural stream channels; active sand and gravel pits; regularly cultivated agricultural land; and residential, commercial, and industrial developments. However, activities funded, authorized, or carried out in these areas by Federal action agencies that may affect the primary constituent elements of the critical habitat, may require consultation pursuant to section 7 of the Act.

In summary, the riparian zone included in the lateral extent of proposed critical habitat for the Arkansas River Shiner serves several functions vital to ensuring the aquatic habitat continues to provide the primary constituent elements needed by the shiner. As stated above, a proper functioning riparian zone helps ensure that the aquatic habitat continues to function ecologically and riparian areas can provide habitat during high water periods. Plains rivers are primarily located in areas with soils predominated by sands. These soils are extremely susceptible to wind and water erosion.

Once erosion starts, channel characteristics, such as hydraulics, depths, velocity and related features can change considerably and large volumes of sediment can become suspended and transported in the channel. The riparian vegetation is crucial to holding soils in place and avoiding stream bank erosion. Riparian vegetation also provides shade vital during summer time low flow events. During these times, stream flows begin to decline and fishes are often isolated to pools near the margins of the river. The overhanging vegetation helps shade these pools. Without the shade, temperatures in these pools can quickly become lethal when they exceed the thermal capacity of the fish. The riparian zone also provides seeds and terrestrial invertebrates that form a component of the diet of the Arkansas River Shiner. In addition, vegetative material from the riparian zone, along with instream production, drives the nutrient/energy cycle of the stream. Aquatic invertebrates utilize this terrestrial vegetative material as food. The Arkansas River Shiner in turn feeds on the invertebrates. The riparian vegetation is an important component of the food web that everything else depends upon for energy and nutrients. The riparian zone also serves to buffer the stream from impacts that occur within the floodplain but outside of the riparian zone. However, in determining the lateral extent for the Arkansas River Shiner, we believe that the riparian zone is capable of supporting most of these important processes and functions, not just serving as a buffer zone.

Critical Habitat Unit Descriptions

Critical habitat is being proposed for the Arkansas River Shiner in three reaches of two different rivers within the Arkansas River basin in Kansas, New Mexico, Oklahoma, and Texas. During development of the critical habitat proposal for the Arkansas River Shiner, we determined which lands are essential to the conservation of the species by defining the physical and biological features essential to the species' conservation and delineating the specific areas defined by them. We then evaluated those lands determined to be essential to ascertain if any specific areas are appropriate for exclusion from critical habitat pursuant to section 4(b)(2) of the Act. On the basis of our initial evaluation, we believe that the benefits of excluding areas in the Beaver/North Canadian (Unit 2) and the Arkansas River (Unit 4), as described in the unit descriptions below, outweighs the benefits of their inclusion, and we are proposing to exclude those lands from the final designation of critical habitat for this species pursuant to section 4(b)(2) of the Act (refer to ''Relationship of Section 4(b)(2) of the Act to Critical Habitat for the Arkansas River Shiner'' section below). A description of all areas determined essential to the conservation of the Arkansas River Shiner follows.

Critical habitat is being proposed for the Arkansas River Shiner on two reaches of the Canadian River in the states of New Mexico, Texas, and Oklahoma. The Canadian River from near Ute Dam in New Mexico to the upper reaches of Eufaula Reservoir in Oklahoma, except for those areas rendered unsuitable for Arkansas River Shiner by Lake Meredith in Texas, is currently occupied by the Arkansas River Shiner. These are the largest, remaining viable aggregations of Arkansas River Shiner, and are considered to represent the ''core'' of what remains of the species. Smaller tributary streams, with the exception of Revuelto Creek in New Mexico and small sections of the tributaries near their confluence may be seasonally occupied by the Arkansas River Shiner.

Unit 1: Canadian River, Quay County, New Mexico, and Oldham and Potter counties, Texas:

Critical habitat Unit 1a consists of approximately 248 km (154 mi) of the Canadian River extending from U.S. Highway 54 bridge near Logan, New Mexico, downstream to the confluence with Coetas Creek, Texas. Seepage from Ute Reservoir, inflow from Revuelto Creek, and several springs help sustain perennial flow in most years. There are occasional periods of no flow, and prior to 1956, low flows in the lower section were historically maintained by effluent from the Amarillo, Texas, wastewater treatment plant. This segment of the Canadian River, despite flows having been modified by Conchas and Ute reservoirs, still supports a largely intact plains river fish fauna. This reach is predominantly in private ownership. The State of New Mexico owns scattered tracts. The reach in Texas is in private ownership, except for a small segment on the extreme lower end that is owned by the National Park Service as part of the Lake Meredith National Recreation Area.

We did not include the following areas in this proposed designation because we determined that these areas are not to essential to the conservation of the Arkansas River Shiner and therefore do not meet the definition of critical habitat. Upstream of Ute Reservoir, the Canadian River was substantially modified following the construction of Conchas Reservoir and likely provides little suitable habitat. A small portion of Arkansas River Shiner historical range occurs upstream of Conchas Reservoir, but the suitability of that reach for Arkansas River Shiner is unknown. No extant aggregations of the Arkansas River Shiner are known from that reach. Arkansas River shiners still occur in portions of the 3.2 km (2 mi) reach between the U.S. Highway 54 bridge and Ute Dam, above the reach proposed as critical habitat. We do not consider this section of the stream to be essential to the conservation of the species since it rarely contains suitable habitat due to the influence of Ute Reservoir.

Unit 1b: Canadian River, Hemphill County, Texas, and Blaine, Caddo, Canadian, Cleveland, Custer, Dewey, Ellis, Grady, Hughes, McClain, McIntosh, Pittsburg, Pontotoc, Pottawatomie, Roger Mills, and Seminole counties, Oklahoma: This reach is predominantly in private ownership, with limited areas of State and tribal ownership (see ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' section). The Texas Parks and Wildlife Department owns a small segment downstream of the town of Canadian, TEXAS (Gene Howe Wildlife Management Area (WMA)). The Oklahoma Department of Wildlife Conservation owns a small section near Roll, Oklahoma (Packsaddle WMA). Small tracts of tribal lands are near Oklahoma City.

Critical habitat Unit 1b consists of approximately 642 km (399 mi) of river extending from the U.S. Highway 60/83 bridge near Canadian, Texas, downstream to the Indian Nation Turnpike bridge northwest of McAlester, Oklahoma. This segment of the Canadian River is the longest unfragmented reach in the Arkansas River Basin that still supports the Arkansas River Shiner. Here, the Arkansas River Shiner range from rare to common, with the species becoming more abundant in a downstream direction.

We did not include the following areas in this proposed designation because we determined that these areas are not to essential to the conservation of the Arkansas River Shiner and therefore do not meet the definition of critical habitat. The Canadian River upstream of the community of Canadian, Texas, to Sanford Dam at Lake Meredith, supported Arkansas River Shiner prior to the construction of Lake Meredith. However, habitat in this segment is degraded and generally unsuitable. Some aggregations of Arkansas River Shiner may still persist upstream of Canadian, Texas, primarily

on a seasonal basis and in extremely small numbers. Altered flow regimes will continue to affect habitat quality in this reach. Aggregations of Arkansas River Shiner also persist in the 49 km (30 mi) section of the Canadian River from the Indian Nation Turnpike bridge downstream to the upper limits of Eufaula Reservoir. However, the downstream distributional limit of these populations frequently fluctuates. Management of water surface elevations in Eufaula Reservoir for flood control and the resultant backwater effects routinely alter stream morphology at the downstream extent of the population. Under elevated surface water conditions, the lower reaches of this segment are degraded or may be entirely unsuitable for Arkansas River Shiner.

Unit 2: Beaver/North Canadian River, Beaver, Ellis, Harper, Major, Texas, and Woodward Counties, Oklahoma—340 km (211 mi) of river extending from Optima Dam in Texas County, Oklahoma, downstream to U.S. Highway 60/281 bridge in Major County, Oklahoma. Almost the entire Beaver/North Canadian River mainstem and at least one of the major tributaries (Deep Fork River) in Oklahoma was historically known to support Arkansas River shiner aggregations. A small population may still persist between Optima Dam and the upper reaches of Canton Reservoir, based on the collection of four individuals since 1990. At present, habitat in large areas of the drainage are degraded or unsuitable, either because of reservoirs, reduced stream flow, or water quality impairment. As previosuly indicated, an assessment of fish communities and aquatic habitat at 10 sites within this unit was conducted during 2000 and 2001 (Wilde 2002). No Arkansas River Shiner were encountered and habitat was considered marginal for Arkansas River Shiner (Wilde 2002). While habitat quality in this reach appears marginal, all of the primary constituent elements are present. However, we are uncertain if the Arkansas River Shiner still inhabits this reach. The segment between Optima Dam and the upper reaches of Canton Reservoir offers the best opportunity for recovery of the Arkansas River Shiner in the Beaver/North Canadian River. Reestablishing Arkansas River Shiner in this reach would involve some habitat restoration to achieve more optimal conditions for the Arkansas River Shiner. Recovery activities will include augmenting existing aggregations of the Arkansas River Shiner and may involve reestablishing additional populations in this system. Consequently we believe habitat within this reach is essential to the conservation of the Arkansas River Shiner but we are proposing, under section 4(b)(2) of the Act, to exclude this reach from the final critical habitat determination.

Land ownership for Unit 2 is predominantly private, with limited areas of State-owned lands. The Oklahoma Department of Wildlife Conservation owns small sections near Beaver, Oklahoma (Beaver River WMA) and near Fort Supply, Oklahoma (Cooper WMA). The Oklahoma Department of Parks and Tourism owns a small section near Woodward, Oklahoma (Boiling Springs State Park).

Unit 3: Cimarron River, Clark, Comanche, Meade, and Seward Counties, Kansas, and Beaver, Blaine, Harper, Kingfisher, Logan, Major, Woods, and Woodward, Counties, Oklahoma, 460 km (286 mi) of river extending from U.S. Highway 54 bridge in Seward County, Kansas, downstream to U.S. Highway 77 bridge in Logan County, Oklahoma. Historically, almost the entire Cimarron River mainstem and several of the major tributaries were inhabited by the Arkansas River Shiner, including the type locality for the species (the area from which the specimens that were used to first describe the species were taken). Between 1985 and 1992, only 16 specimens of the Arkansas River Shiner were collected from the Cimarron River. Since 1992, no specimens had been reported until 2004. In August of 2004 eight Arkansas River Shiners were collected near Guthrie, Oklahoma, by SWCA Environmental Consultants (Stuart Leon, U.S. Fish and Wildlife Service, *in litt.* 2004). Although this population is by no means secure, it continues to persist over time and appears to be at least marginally viable. The diminished distribution and abundance of the Arkansas River Shiner in the Cimarron River is due, in part, to the introduction of the Red River shiner and continuing habitat loss and degradation (Cross *et al.* 1983; Felley and Cothran 1981). The Red River shiner, a small minnow endemic to the Red River, was first recorded from the Cimarron River in Kansas in 1972 (Cross *et al.* 1985) and from the Cimarron River in Oklahoma in 1976 (Marshall 1978). Since that time, the nonindigenous Red River shiner has essentially replaced the Arkansas River shiner throughout much of the Cimarron River. While reduced streamflow in the upper reaches and the presence of Red River shiners will likely complicate recovery efforts in the Cimarron River, increased management efforts would enhance the survival of the Arkansas River Shiner in this river system. Suitable habitat for the Arkansas River Shiner appears to exist throughout most of the system, but detailed studies have not yet been conducted. The Cimarron River is included in the designation because it is essential habitat and contains all of the primary constituent elements, except for the presence of a competitive nonnative species, which we intend to address during recovery planning efforts for the Arkansas River Shiner. The reach proposed for designation reflects the need for sufficient lengths of stream that provide habitat for successful completion of Arkansas River Shiner life cycle (see ''Primary Constituent Elements'' section) and to support populations of Arkansas River Shiner large enough to be self-sustaining over time, despite fluctuations in local conditions. Based upon the limited number of Arkansas River Shiner collection records from the Cimarron River, we are uncertain if this population is self-sustaining over time. As noted in the ''Public Comments Solicited'' section above, we are seeking data on the status and distribution of the Arkansas River Shiner in the Cimarron River. On the basis of public comment and any new information received, we may find during the development of the final rule that this river segment or portions thereof, are not essential, are appropriate for exclusion under section 4(b)(2), or not appropriate for exclusion; in all of these cases, this information would be incorporated into the final designation.

Land ownership for Unit 3 is predominantly in private. Private lands in this reach are primarily used for grazing and other forms of agriculture.

We did not include the Cimarron River downstream of the U.S. Highway 77 bridge near Guthrie to Keystone Reservoir because we have no evidence that this reach is occupied and do not believe that it is an area essential to the conservation of the Arkansas River Shiner. This area was also not part of the prior designation of critical habitat for the Arkansas River Shiner. We believe sufficient habitat for the Arkansas River Shiner to complete its life cycle exists within the reach proposed for designation as critical habitat.The lower most reach of the Cimarron River, including its confluence with the Arkansas River, was inundated when Keystone Reservoir was impounded in 1964. This area, including Keystone Reservoir, does not provide suitable habitat because the Arkansas River Shiner would not be able to persist within the inundated portions of the River.

Unit 4: Arkansas River, Barton, Cowley, Pawnee Reno, Rice, Sedgwick, and Sumner Counties, Kansas, –313 km (194 mi) of river extending from the confluence of the Pawnee River near Larned, Kansas, downstream to Kansas/Oklahoma State line in Cowley County, Kansas. This distance does not inlude a 20 km (12.4 mi) reach of the Arkansas River within the City of Wichita metropolitan area, extending from the westbound lane of Kansas State Highway 96 crossing downstream to the Interstate 35 crossing. The Arkansas River in Kansas contains a significant portion of the species' historical range. The Arkansas River shiner historically inhabited the entire mainstem of the Arkansas River, but had begun to decline by 1952 due to the construction of John Martin Reservoir 10 years earlier on the Arkansas River in Bent County, Colorado (Cross *et al.* 1985). Typically, releases from John Martin Reservoir and irrigation return flows from eastern Colorado maintain streamflow in the Arkansas River as far east as Syracuse, Kansas; but, the river often ceases to flow between Syracuse and Dodge City, Kansas, due to surface and groundwater withdrawals. Surface flow then resumes near Larned and Great Bend, Kansas. Lack of sufficient streamflow and ongoing water quality degradation renders much of the Arkansas River west of Larned largely unsuitable for the Arkansas River Shiner. As previously stated, we are not including the reach upstream of Larned, Kansas, in this proposed designation because it lacks several of the primary constituent elements and no longer meets the definition of critical habitat. Stream flows downstream of the confluence of the Pawnee River near Larned are more reliable and habitats are characteristic of those used by Arkansas River Shiner in other portions of its current range. This stream segment contains one or more of the primary constituent elements and recovery activities for the Arkansas River Shiner likely will include reestablishing additional populations in this reach. Consequently, this segment is considered essential for the conservation of the Arkansas River Shiner but we are proposing, under section 4(b)(2) of the Act, to exclude this reach from the final critical habitat determination.

Lands in Unit 4 are entirely in private ownership except for a small area near the Kansas/Oklahoma State line owned by the U.S. Army Corps of Engineers (Kaw Wildlife Area). This area is managed by the State of Kansas (Kansas Department of Wildlife and Parks).

Table 1 below provides approximate area (mi/km) determined to be essential to the Arkansas River Shiner and area proposed for exclusion from the final critical habitat designation by State.

	Essential area proposed as critical habitat	Area proposed for exclusion from the final critical habitat designation
Kansas	62.5 (100.6)	194.1 (312.4)
New Mexico	38.0 (61.2)	0
Oklahoma	595.6 (958.5)	210.8 (339.3)
Texas	142.6 (229.5)	0
Total	838.7 (1,349.8)	404.9 (651.6)

Relationship of Section 4(b)(2) of the Act to Arkansas River Shiner Critical Habitat

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data available after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined in our analysis that the benefits of exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species.

Pursuant to section 4(b)(2) of the Act, we must consider impacts to national security and other relevant impacts in addition to economic ones. We have determined that the lands within the designation of critical habitat for the Arkansas River Shiner are not owned or managed by the Department of Defense and there are currently no habitat conservation plans for the Arkansas River Shiner. In developing critical habitat designations, we have also recognized under section 4(b)(2) partenerships and conservation programs or efforts that provide a conservation benefit to the subject species. In the case of Arkansas River Shiner, it is our intent to recognize future conservation efforts. In this regard we have met with the Arkansas River Shiner Coalition (Coalition) whose mission is to ease the regulatory burdens of designated critical habitat for its members and to work with the Service toward the eventual recovery of the Arkansas River Shiner. The Coalition represents several agricultural and ranching associations, water service providers, groundwater conservation districts, and other groups in Texas, Oklahoma, and New Mexico. It is the intent of the Coalition to develop an Arkansas River Shiner management plan that addresses the conservation needs of the Arkansas River Shiner and to submit their plan to us during a public comment period for consideration in the final critical habitat determination. If we receive a plan from the Coalition we will evaluate the conservation measures being provided to or planned for the Arkansas River Shiner when making our final determination of critical habitat, and we may exclude areas pursuant to section 4(b)(2) of the Act if we find that the benefits of their exclusion outweigh the benefits of their inclusion.

There are two areas within the proposed designation that are within the historic range of Arkansas River Shiner, have been determined to be essential to the conservation of Arkansas River Shiner, currently contain one or more of the primary constituent elements for Arkansas River Shiner, and have been identified for future recovery actions that may include augmentation of existing populations or reestablishment of populations. These areas are the Beaver/North Canadian River and the Arkansas River.

Recovery activities for Arkansas River Shiner likely will include augmenting and restablishing Arkansas River Shiner populations in the Beaver/North Canadian or the Arkansas River. We believe that the best way to achieve this objective will be to use the authorities under section 10(j) of the Act to reestablish the Arkansas River Shiner as experimental populations within areas

of its historic range. Considering the Arkansas River Shiner may be extirpated or that existing occurrences may be so small they may not be viable from these reaches and natural repopulation appears unlikely without human assistance, we believe that designation of the area to be repopulated using section 10(j) of the Act is the appropriate tool to utilize in future restoration efforts and to encourage future conservation actions. Any future recovery efforts, including reintroduction of the species to areas of its historic range, must be conducted in accordance with NEPA and the Act.

In our critical habitat designation we use the provisions outlined in section 4(b)(2) of the Act to evaluate those specific areas essential to the conservation of the species to determine which areas to propose and subsequently finalize (*i.e.*, designate) as critical habitat. On the basis of our initial evaluation, we believe that the benefits of excluding the Beaver/North Canadian River in Oklahoma and the lower Arkansas River in Kansas from the designation of critical habitat for Arkansas River Shiner outweighs the benefits of their inclusion, and we are proposing to exclude these lands from final designation pursuant to section 4(b)(2) of the Act. We note that additional areas may also be considered for exclusion in the final rule and that any exclusions made in the final rule will be the result of a reanalysis of new information received, including consideration of all comments received and the findings of the economic and NEPA analyses. In this regard, we have specifically requested public comment on this issue (see ''Public Comments Solicited'' section above), and we provide our preliminary rationale below to further assist the public in commenting on this issue.

(1) Benefits of Inclusion

The principal benefit of any designated critical habitat is that federally funded or authorized activities in such habitat requires consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification or destruction of critical habitat. In the absence of designated critical habitat in these unoccupied reaches, consultation on federally funded or authorized activities would not occur. However, few consultations, all informal, were conducted within these river reaches prior to vacature of the previously designated critical habitat. Some 25 consultations have been conducted on the Beaver/North Canadian River since April 4, 2001, but none of those consultations reached the point of adverse modification. On the Arkansas River in Kansas, we anticipate even less consultation activity. Since designation of critical habitat in 2001, only nine informal consultations have been conducted and none of those reached the point of adverse modification.

In *Sierra Club* v. *Fish and Wildlife Service,* 245 F.3d 434 (5th Cir. 2001), the Fifth Circuit Court of Appeals stated that the identification of habitat essential to the conservation of the species can provide informational benefits to the public, State and local governments, scientific organizations, and Federal agencies. The court also noted that heightened public awareness of the plight of listed species and their habitats may facilitate conservation efforts. We agree with these findings; however, we believe that there would be little additional informational benefit gained from including the Beaver/North Canadian or the Arkansas River within the final designation of critical habitat because they were included in the previous designation, are included in this proposed rule, and will be discussed in the final rule. Consequently, we believe that the informational benefits are already provided even though we intend to exclude these areas from the final designation.

(2) Benefits of Exclusion

Recovery activities for Arkansas River Shiner likely will include augmenting and restablishing Arkansas River Shiner populations in the Beaver/North Canadian or the Arkansas River. We believe that the best way to achieve this objective will be to use the authorities under section 10(j) of the Act to reestablish the Arkansas River Shiner as experimental populations within areas of its historic range. Considering the Arkansas River Shiner may be extirpated or that existing occurrences may be so small they may not be viable from these reaches and natural repopulation appears unlikely without human assistance, we believe that designation of the area to be repopulated using section 10(j) of the Act is the appropriate tool to utilize in future restoration efforts and to encourage future conservation actions. Any future recovery efforts, including reintroduction of the species to areas of its historic range, must be conducted in accordance with NEPA and the Act. An overview of the process to establish an experimental population under section 10(j) of the Act is described below.

Section 10(j) of the Act enables us to designate certain populations of federally listed species that are released into the wild as ''experimental.'' The circumstances under which this designation can be applied are the following: (1) The population is geographically separate from non-experimental populations of the same species (*e.g.*, the population is reintroduced outside the species' current range but within its probable historic range); and (2) we determine that the release will further the conservation of the species. Section 10(j) is designed to increase our flexibility in managing an experimental population by allowing us to treat the population as threatened, regardless of the species status elsewhere in its range. In situations where we have experimental populations, certain section 9 prohibitions (*e.g.*, harm, harass, capture) that apply to endangered and threatened species may no longer apply, and a special rule can be developed that contains the prohibitions and exceptions necessary and appropriate to conserve that species. This flexibility allows us to manage the experimental population in a manner that will ensure that current and future land, water, or air uses and activities will not be unnecessarily restricted and the population can be managed for recovery purposes.

We strongly believe that, in order to achieve recovery for the Arkansas River Shiner, we would need the flexibility provided for in section 10(j) of the Act to help ensure the success of augmenting and reestablishing Arkansas River Shiner populations in the Beaver/North Canadian or the Arkansas River. Use of section 10(j) is meant to encourage local cooperation through management flexibility. Critical habitat is often viewed negatively by the public since it is not well understood and there are many misconceptions about how it affects private landowners (Patlis 2001). We believe it is important for recovery of this species that we have the support of the public when we move toward the development and implementation of a recovery plan. It is critical to the recovery of the Arkansas River Shiner that we reestablish the species in areas outside of its current occupied range.

When we designate a population as experimental, section 10(j) of the Act requires that we determine whether that population is either essential or nonessential to the continued existence of the species, on the basis of the best available information. Nonessential experimental populations located outside National Wildlife Refuge System or National Park System lands are treated, for the purposes of section 7 of the Act, as if they are proposed for

listing. Thus, for nonessential experimental populations, only two provisions of section 7 would apply outside National Wildlife Refuge System and National Park System lands: section 7(a)(1), which requires all Federal agencies to use their authorities to conserve listed species, and section 7(a)(4), which requires Federal agencies to informally confer with us on actions that are likely to jeopardize the continued existence of a proposed species. Section 7(a)(2) of the Act, which requires Federal agencies to ensure that their activities are not likely to jeopardize the continued existence of a listed species, would not apply except on National Wildlife Refuge System and National Park System lands. Experimental populations determined to be essential to the survival of the species would remain subject to the consultation provisions of section 7(a)(2) of the Act.

In order to establish an experimental population, we must issue a proposed regulation and consider public comments on the proposed rule prior to publishing a final regulation. In addition, we must comply with NEPA. Also, our regulations require that, to the extent practicable, a regulation issued under section 10(j) of the Act represent an agreement between us, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of the experimental population (see 50 CFR 17.81(d)).

As discussed above, we believe the flexibility provided for in section 10(j) of the Act is necessary to help ensure the success of augmenting and restablishing Arkansas River Shiner populations in the Beaver/North Canadian or the Arkansas Rivers. The flexibility gained by establishment of an experimental population through section 10(j) would be of little value if a designation of critical habitat overlaps it. This is because Federal agencies would still be required to consult with us on any actions that may adversely modify critical habitat. In effect, the flexibility gained from section 10(j) would be rendered useless by the designation of critical habitat. In fact, section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated under the Act for any experimental population determined to be not essential to the continued existence of a species.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

Through the development of this proposal, we have identified lands that we believe to be essential to the conservation of the Arkansas River Shiner. Based on our initial analysis above and our analysis and treatment of these lands in our previous designation of critical habitat for the Arkansas River Shiner, we believe that the benefits of excluding these lands from the final critical habitat designation, as allowed under section 4(b)(2) of the Act, outweigh the potential benefits of including these lands. Further, we have determined that excluding these areas will not result in the extinction of the Arkansas River Shiner, as the core distribution of the Arkansas River Shiner would remain within areas proposed for critical habitat designation and section 7(a)(2) (consultation requirements) and section 9 (prohibitions against take) of the Act still apply to activities affecting the Arkansas River Shiner. Publication of this proposed rule would help accomplish the educational benefits of critical habitat by informing the public of the importance of the Beaver/North Canadian River in Oklahoma, and the Arkansas River in Kansas to recovery of the Arkansas River Shiner.

Effects of Critical Habitat Designation

Section 7 Consultation

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to insure that their actions are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. This requirement is met through section 7 consultation under the Act. Our regulations define ''jeopardize the continued existence of'' as to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02). ''Destruction or adverse modification of designated critical habitat'' is defined as a direct or indirect alteration that appreciably diminishes the value of the critical habitat for both the survival and recovery of the species (50 CFR 402.02). Such alterations include, but are not limited to, adverse changes to the physical or biological features, *i.e.*, the primary constituent elements, that were the basis for determining the habitat to be critical. We are currently reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist Federal agencies in eliminating conflicts that may be caused by their proposed actions. The conservation measures in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, 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 such a species or to destroy or adversely modify its critical habitat. 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. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide ''reasonable and prudent alternatives'' to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action,

that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Service's Regional Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of 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 under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or a conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat, or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the Arkansas River Shiner or its critical habitat will require consultation under section 7. Activities on private, State, or county lands, or lands under local jurisdictions requiring a permit from a Federal agency, such as Federal Highway Administration or Federal Emergency Management Act funding, or a permit from the Corps under section 404 of the Clean Water Act, will continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of Arkansas River Shiner is appreciably reduced. We note that such activities also may jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat for the Arkansas River Shiner include, but are not limited to:

(1) Actions that significantly and detrimentally alter the minimum flow or the natural flow regime of any of the proposed stream segments, including activities that cause barriers or deterrents to dispersal, inundates or drains habitat, or significantly converts habitat. Possible actions would include groundwater pumping, impoundment, water diversion, and hydropower generation. We note that such flow reductions that result from actions affecting tributaries of the proposed stream reaches also may destroy or adversely modify critical habitat.

(2) Actions that significantly and detrimentally alter the characteristics of the riparian zone in any of the proposed stream segments. Possible actions would include vegetation manipulation, timber harvest, road construction and maintenance, prescribed fire, livestock grazing, off-road vehicle use, powerline or pipeline construction and repair, mining, and urban and suburban development. Some of these activities, when planned and implemented appropriately, can prove beneficial to the species and its habitat.

(3) Actions that significantly and detrimentally alter the channel morphology of any of the stream segments listed above. Possible actions would include channelization, impoundment, road and bridge construction, deprivation of substrate source, destruction and alteration of riparian vegetation, reduction of available floodplain, removal of gravel or floodplain terrace materials, reduction in stream flow, discharge of dredged or fill material and excessive sedimentation from mining, livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances.

(4) Actions that significantly and detrimentally alter the water chemistry in any of the proposed stream segments. Possible actions would include intentional or unintentional release of chemical or biological pollutants into the surface water or connected groundwater at a point source or by dispersed release (non-point).

(5) Introducing, spreading, or augmenting non-native aquatic species in any of the proposed stream segments. Possible actions would include fish stocking for sport, aesthetics, biological control, or other purposes; release of live bait fish; aquaculture; construction and operation of canals; and interbasin water transfers.

All lands proposed as critical habitat are within the geographical area currently occupied by the species and are necessary for the conservation of the Arkansas River Shiner. Federal agencies already consult with us on actions that may affect the Arkansas River Shiner to ensure that their actions do not jeopardize the continued existence of the species. Thus, we do not anticipate substantial additional regulatory protection will result from critical habitat designation.

If you have questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Oklahoma Ecological Services Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and plants and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Division of Threatened and Endangered Species, P.O. Box 1306, Albuquerque, New Mexico 87102 (telephone 505/248–6920; facsimile 505/248–6922).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

We are preparing an analysis of the economic impacts of proposing critical habitat for the Arkansas River Shiner that complies with the ruling by the Tenth Circuit Court of Appeals in *New Mexico Cattle Growers Association et al.* v. *U.S. Fish and Wildlife Service.* 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. When published, copies of the draft economic analysis will be available for downloading from the Internet at *http://ifw2es.fws.gov/Oklahoma,* or by contacting the Oklahoma Ecological Services Office directly (see **ADDRESSES** section).

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert

opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of this review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the public comment period on this proposed rule as we prepare our final rulemaking. Accordingly, the final designation may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. We intend to hold three public hearings, one in southwestern Kansas, one in the Texas Panhandle and one in Central Oklahoma. We will schedule public hearings on this proposal and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or adversely affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. The Service is preparing a draft economic analysis of this proposed action. The Service will use this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

The draft economic analysis will be made available for public review and comment before we finalize this designation. At that time, copies of the analysis will be available for downloading from the Oklahoma Ecological Services Office's Internet Web site at *http://ifw2es.fws.gov/Oklahoma* or by contacting the Oklahoma Ecological Services Office directly (*see* **ADDRESSES** section).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, 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 Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities are affected by this proposed designation, the following analysis considers the relative number of small entities likely to be impacted in an area.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the Act and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and provide for a public comment period on the proposed designation. The Service will include with the notice of availability, 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. The Service has 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 the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2))

In the draft economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more; (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

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. This proposed rule to designate critical habitat for the Arkansas River Shiner is considered a significant regulatory action under Executive Order 12866 as it may raise novel legal and policy issues. However, this designation is not expected to significantly affect energy supplies, distribution, or use because

there are few pipelines and no distribution facilities, power grid stations, etc. within the boundaries of proposed critical habitat. Therefore, this action is not a significant energy-related action and no Statement of Energy Effects is required. We will, however, further evaluate this issue as we conduct our economic analysis and, as appropriate, 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.*), the Service makes the following findings:

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated. We will, however, further evaluate this issue as we conduct our economic analysis and, as appropriate, review and revise this assessment as warranted.

(b) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, 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; AFDC 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 who receive Federal funding, assistance, or permits or who 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.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), this rule is not anticipated to have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or 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. Due to current public knowledge of the species' protections, the prohibition against take of the species both within and outside of the proposed areaswe do not anticipate that property values will be affected by the critical habitat designation. However, we have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, this rule does not have significant federalism effects. A federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policies, we requested information from and coordinated development of this proposed critical habitat designation with appropriate State resource agencies in Kansas, New Mexico, Oklahoma, and Texas.

The proposed designation of critical habitat in areas currently occupied by the Arkansas River Shiner imposes no additional significant restrictions beyond those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The proposed designation of critical habitat may have some benefit to the State and local resource agencies in that the areas essential to the conservation of this species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of this species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the proposed areas to assist the public in understanding the habitat needs of the Arkansas River Shiner.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain new or revised information collection for which OMB approval is required under the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

Our position is that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), *cert. denied* 116 S. Ct. 698 (1996)). However, when the range of the species includes States within the Tenth Circuit (the States of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, Utah, and Wyoming), such as that of the Arkansas River Shiner, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we undertake a NEPA analysis for critical habitat designation. Accordingly, we will be conducting an environmental assessment and providing that document for public review and comment. In our previous designation, we prepared an environmental assessment and finding of no significant impact on the designation of critical habitat for the Arkansas River Shiner.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis.

We recognize that we must carry out our responsibilities under the Act in a manner that harmonizes the Federal trust responsibility to Tribes and Tribal sovereignty while striving to ensure that Native American Tribes do not bear a disproportionate burden for the conservation of listed species. This proposed designation of critical habitat for the Arkansas River Shiner currently includes tribal lands. Tribal lands within the proposed designation primarily exist as scattered, fragmented tracts that are generally held privately by the individual tribal member or are held in trust for the tribe by the Bureau of Indian Affairs. We are soliciting information from the Native American Tribes and will schedule meetings, as requested, with them during the comment period regarding potential impacts to the Tribes or their resources that may result from the critical habitat designation, and to discuss whether they have or would like to prepare conservation plans that address the Arkansas River Shiner on their lands. We will continue to work with the Tribes on these issues and provide assistance, if requested, on the development of management and conservation plans, conservation agreements, grants and other cooperative projects that could contribute to the recovery of the Arkansas River Shiner.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Oklahoma Ecological Services Office (see **ADDRESSES** section).

Author

The primary authors of this notice are staff located at the Oklahoma Ecological Services Office (see **ADDRESSES** section).

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 § 17.95(e), by revising critical habitat for the Arkansas River shiner (*Notropis girardi*) § to read as follows:

17.95 Critical habitat—-fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Arkansas River Shiner (*Notropis girardi*)

(1) Critical habitat units are depicted for Clark, Comanche, Meade, and Seward Counties, Kansas; Quay County, New Mexico; Beaver, Blaine, Caddo, Canadian, Cleveland, Custer, Dewey, Ellis, Grady, Harper, Hughes, Kingfisher, Logan, Major, McClain, McIntosh, Pittsburg, Pontotoc, Pottawatomie, Roger Mills Seminole, Woods and Woodward Counties, Oklahoma; and Hemphill, Oldham, and Potter Counties, Texas, on the maps and as described below.

(2) Critical habitat includes the stream channels within the identified stream reaches indicated on the map below, and includes a lateral distance of 91.4 m (300 ft) on each side of the stream width at bankfull discharge. Bankfull discharge is the flow at which water begins to leave the channel and move into the floodplain and generally occurs with a frequency of every 1 to 2 years.

(3) Within these areas, the primary constituent elements include, but are not limited to, those habitat components that are essential for the primary biological needs of foraging, sheltering, and reproduction. These elements include the following—

(i) A natural, unregulated hydrologic regime complete with episodes of flood and drought or, if flows are modified or regulated, a hydrologic regime characterized by the duration, magnitude, and frequency of flow events capable of forming and maintaining channel and instream habitat necessary for particular Arkansas River shiner life-stages in appropriate seasons;

(ii) A complex, braided channel with pool, riffle (shallow area in a streambed causing ripples), run, and backwater components that provide a suitable variety of depths and current velocities in appropriate seasons;

(iii) A suitable unimpounded stretch of flowing water of sufficient length to allow hatching and development of the larvae;

(iv) A river bed of predominantly sand, with some patches of gravel and cobble;

(v) Water quality characterized by low concentrations of contaminants and natural, daily and seasonally variable temperature, turbidity, conductivity, dissolved oxygen, and pH;

(vi) Suitable reaches of aquatic habitat, as defined by primary constituent elements described in paragraphs (3)(i) through (v) above, and adjacent riparian habitat sufficient to support an abundant terrestrial, semiaquatic, and aquatic invertebrate food base; and

(vii) Few or no predatory or competitive non-native fish species present.

(4) The minimum mapping unit for this designation of critical habitat for the Arkansas River shiner does not exclude all developed areas, such as buildings, roads, bridges, parking lots, railroad tracks, other paved areas, the lands that support these features, and other lands unlikely to contain the

primary constituent elements. Federal actions limited to these areas would not trigger a section 7 consultation, unless they affect protected or restricted habitat and one or more of the primary constituent elements in adjacent critical habitat.

(5) Kansas (Sixth Principal Meridian (SPM)), New Mexico (New Mexico Principal Meridian (NMPM)), Oklahoma (Cimarron Meridian (CM) and Indian Meridian (IM)), and Texas (geographic coordinates): Areas of land and water as follows (physical features were identified using USGS 7.5′ quadrangle maps; river reach distances were derived from digital data obtained from USGS National Atlas data set for river reaches, roads, and county boundaries.

(6) Critical habitat units for the Arkansas River shiner are described below.

(i) Unit 1a. Canadian River—approximately 248 kilometers (km) (154 miles (mi)) from U.S. Highway 54 bridge near Logan, Quay County, New Mexico (NMPM, T. 13 N., R. 33 E., NW¼ Sec. 14) downstream to the confluence with Coetas Creek, Potter County, Texas (35° 30′N 26″ N, 101°46′37″ W).

(ii) Unit 1b. Canadian River—approximately 642 km (399 mi), extending from U.S. Highway 60/83 bridge near Canadian, Hemphill County, Texas (35°56′02″ N, 100°22′00″ W) downstream to Indian Nation Turnpike bridge northwest of McAlester, Oklahoma (IM T. 8 N., R. 13 E., SE¼ SW¼ SE¼ Sec. 23).

(iii) Unit 2. Beaver/North Canadian River, Texas, Beaver, Harper, Ellis, Woodward, and Major Counties, Oklahoma—approximately 340 km (211 mi) of river extending from Optima Dam in Texas County, Oklahoma (CM, T. 2 N., R. 18 E., NW¼ SE¼ SE¼ Sec. 5) downstream to U.S. Highway 60/281 bridge in Major County, Oklahoma (IM, T. 20 N., R. 16 W., west boundary Sec. 28).

(iv) Unit 3. Cimarron River—approximately 460 km (286 mi), extending from U.S. Highway 54 bridge in Seward County, Kansas (SPM, T. 33 S., R. 32 W., Sec. 25) downstream to U.S. Highway 77 bridge in Logan County, Oklahoma (IM, T. 17 N., R. 2 W., Sec. 29).

(v) Unit 4. Arkansas River, Barton, Cowley, Pawnee, Reno, Rice, Sedgwick, and Sumner Counties, Kansas—approximately 313 km (194 mi) of river extending from confluence with Pawnee River near Larned, Pawnee County, Kansas (SPM, T. 22 S., R. 16 W., Sec. 5) downstream to Kansas/Oklahoma State line in Cowley County, Kansas (SPM, T. 35 S., R. 5 E., southern boundary Sec. 18).

(iv) **Note:** Map of critical habitat units follows:

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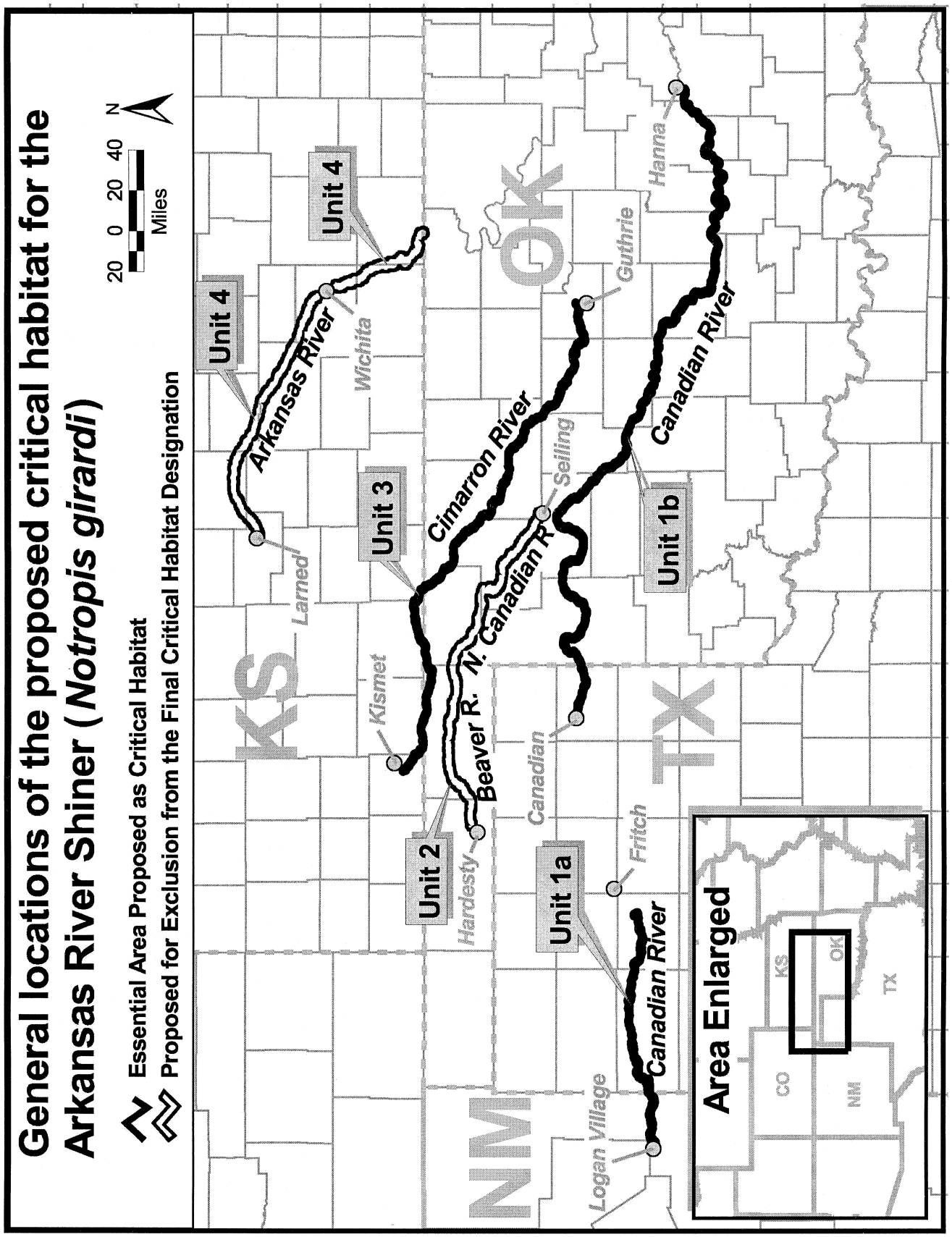

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* * * * *

Dated: September 30, 2004.

Julie MacDonald,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–22396 Filed 10–5–04; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 69, No. 193

Wednesday, October 6, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Advisory Committee on Voluntary Foreign Aid; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: October 27, 2004 (9:15 a.m. to 3:30 p.m.).

Location: The National Press Club, 529 14th Street, NW., 13th Floor, Washington, DC 20045.

The meeting's morning session will feature discussions on the humanitarian crisis in Darfur by USAID and PVO officials and a presentation by Ambassador Carlos Pascual on the new Office of the Coordinator for Reconstruction and Stabilization in the U.S. Department of State. The afternoon session will feature a discussion on the Global Development Alliance, highlighting success stories and lessons learned. The meeting will close with an update on the Millennium Challenge Account.

The meeting is free and open to the public. Persons wishing to attend the meeting can register online at *www.ACVFA.com* or e-mail their name to Margaret Hill at *Margaret.Hill@triumph-tech.com* or Jocelyn Rowe at *jrowe@usaid.gov*.

Dated: September 30, 2004.

Jocelyn M. Rowe,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA).

[FR Doc. 04–22397 Filed 10–5–04; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Animal And Plant Health Inspection Service

[Docket No. 04–100–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations governing the introduction of certain genetically engineered organisms and products.

DATES: We will consider all comments that we receive on or before December 6, 2004.

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

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–100–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–100–1.
- E-mail: Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 04–100–1'' on the subject line.
- Agency Web Site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information on the regulations governing the introduction of genetically engineered organisms and products, contact Mr. Steven M. Bennett, Management Analyst, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737; (301) 734–5672. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR Part 340; Introduction of Organisms and Products Altered or Produced Through Genetic Engineering.

OMB Number: 0579–0085.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture may prohibit or restrict the importation, entry, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or the dissemination of a plant pest into the United States.

Under that authority, the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture administers 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.''

The regulations require that persons who wish to introduce organisms or

products provide certain information through our permitting and notification process. This information includes, among other things, a complete description of the organism or product, the safeguards that will be used in preventing escape, the destination of field test locations, and field test results that describe any unusual or harmful occurrences. We use this information to evaluate the plant pest risk posed by the genetically engineered organisms and products.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.9133 hours per response.

Respondents: U.S. importers and shippers of genetically engineered organisms and products and agricultural companies that produce or test genetically engineered organisms or products or that engage in product research and development.

Estimated annual number of respondents: 375.

Estimated annual number of responses per respondent: 7.8133.

Estimated annual number of responses: 2,930.

Estimated total annual burden on respondents: 2,676 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 30th day of September 2004.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E4–2523 Filed 10–5–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region, Arizona, New Mexico, West Texas and Oklahoma: Proposed Forest Plan Amendment to the Land and Resource Management Plan for Natural Gas Resource Development and Leasing Decision on Jicarilla Ranger District, Carson National Forest, Rio Arriba County, NM; Additional Filings

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service initially published a Notice of Intent in the **Federal Register** (67 FR 52706–52709, August 13, 2002) for the Proposed Surface Management of Natural Gas Resource Development Environmental Impact Statement (EIS) project on the Jicarilla Ranger District, Carson National Forest. The Draft EIS (DEIS) for this project was released in October 2003. Based on public comments received on the DEIS, the Carson Forest Supervisor determined there was a need to clarify the Purpose and Need for Action and to modify the Proposed Action. This EIS prepared under this Notice of Intent will replace the DEIS that was previously prepared.

The USDA Forest Service will prepare an EIS on a proposal to amend the Forest's Land and Resource Management Plan (hereafter called Forest Plan) to incorporate standards and guidelines for surface management of natural gas resource development on the Jicarilla Ranger District. Additionally, the amendment would include the designation of five geographical areas as ''Areas of Resource Concerns'' that recognize the unique characteristics of each area and would provide area direction on how to manage these areas. The amendment would incorporate a decision on whether to offer for lease a specified 2,502 acres for which an Expression of Interest has been received, and if offered, with what stipulations. Finally, the proposal would determine if future unleashed acres would be offered for leasing and if leased, identify the appropriate surface protection stipulations to be added to the lease.

DATES: Submit comments on or before November 5, 2004.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review during the winter of 2005. At that time, EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. The Final EIS is scheduled to be completed in early summer of 2005.

ADDRESSES: Address all comments concerning this notice to the Carson National Forest, ATTN: Jicarilla Gas Development EIS, 208 Cruz Alta Road, Taos, NM 87571. E-mail comments may be sent to *comments-southwestern-carson@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: David Seesholtz, Forest Planner, Carson National Forest, at (505) 758–6210.

SUPPLEMENTARY INFORMATION: The information presented in this notice is included to help the reviewer determine if they are interested in or potentially affected by the proposed action.

Background

The Jicarilla Ranger District is located in the northwest portion of New Mexico within the San Juan Basin, about 50 miles east of Farmington. The district encompasses over 159,000 acres (including over 6,000 acres of private land) and was incorporated as a part of the Carson National Forest in 1910. During the 1940s and 1950s, exploration for oil and gas began in the San Juan Basin, and subsequently a highly successful natural gas industry developed. Today, natural gas production is the prevalent use on the Jicarilla Ranger District. Currently ninety-eight percent of the Jicarilla Ranger District is leased for mineral development.

Purpose and Need for Action

The mission of the Forest Service, and specifically the Carson National Forest, in relation to minerals management is two-fold: (1) Support, facilitate, and administer the orderly exploration, development, and production of minerals and energy resources on National Forest System Lands to help meet the present and future needs of the Nation; while, (2) Simultaneously protecting the environment and conserving the natural resource legacy (National Energy Policy, 3–1).

On the Jicarilla Ranger District this mission is accomplished in a variety of

means depending upon the status of existing mineral rights and associated leases. The Reasonable Foreseeable Development Scenario for the San Juan Basin (Engler *et al.* 2001) projects the Forest could receive requests to drill almost 700 new wells on the Jicarilla Ranger District over the next 20 years. The most recent estimates provided by industry indicate a possibility of up to 800 new wells. This would result in an increase in well density and the potential to nearly double the number of well pads.

The Forest has identified issues and concerns where additional guidance is needed to protect surface resources during the development and production of fluid minerals.

There is a need to amend the forest plan to provide additional standard and guidelines for the protection of surface resources in regards to leasing and the orderly development of future oil and gas production.

The Forest has identified five geographical areas within the Jicarilla Ranger District that exhibit unique environmental characteristics and would need area-specific standards and guidelines to protect the mixture of resource values associated with each area.

There is a need to complete a leasing analysis that would identify stipulations and conditions that would be applied to all new leases, including those that are pending, currently unleased, and any existing leases that become available in the future for leasing.

There is a need to make a lease decision on 2,502 acres for which the Carson National Forest has received and expression of interest.

There is a need to complete a cumulative effects analysis that encompasses the existing and future development of oil & gas resources on the Jicarilla Ranger District.

Desired Condition

Since most of the Jicarilla Ranger District is currently leased, the desired condition for the Jicarilla Ranger District recognizes the leaseholders' existing rights to drill for, extract, remove and market gas products. With consideration of lease holder rights, the desired condition for the Jicarilla Ranger District is to (1) provide the access needed to reach gas resources and meet energy needs of the Nation, while (2) productivity of the land for other uses is sustained, (3) biodiversity is supported, (4) cultural resources are protected and preserved, (5) long-term health of the ecosystem is maintained and, (6) minimizing negative impacts to the quality of experience for Forest users, due to oil and gas development. Specifically, the Forest wants to reduce the impact from the development of oil and gas operations, as much as possible, on surface resources.

Proposed Action

The Forest Service proposes to amend the Forest Plan to provide additional guidance for oil & gas development on the Jicarilla Ranger District.

(A) On existing leases these guidelines would be applied, as applicable, through Conditions of Approval of the Surface Use Plan of Operations.

(B) For new leases these guidelines would be applied through stipulations attached to the new lease and through Conditions of Approval.

(C) The Proposed Action would encourage the use of unconventional drilling techniques, such as directional drilling, co-location, and twining, to reduce the impact to surface resources.

(D) The Proposed Action would recognize Bancos Canyon, La Jara Canyon, Valencia Canyon, Vaqueros Canyon, and Fierro Canyon and Mesa as Areas of Resource Concern. In these areas the feasibility of unconventional drilling techniques would be required as part of the common plan of development.

A detailed description of the Proposed action can be accessed via the Internet at *www.fs.fed.us/r3/carson/*.

Scoping Process

Scoping is a process that identifies the significant issues to be analyzed in depth in the environmental impact statement. Public meetings were held during the formulation of the original Draft EIS. The results from the previous public involvement have helped define the new proposed action and purpose & need. No additional formal meetings are scheduled at this time. The Forest is willing to host a public meeting or a field tour if interest is expressed.

Preliminary Issues and Alternatives

The Forest Service has developed the proposed action to meet the purpose and need for action with the best information available—it is not a decision. This proposal is intended to facilitate public involvement in identifying pertinent issues, developing meaningful alternatives, and analyzing relevant effects.

Lead and Cooperating Agencies

USDA Forest Service, Carson National Forest will serve as the lead agency for this analysis. USDI Bureau of Land Management, Farmington Field Office will be considered a cooperating agency on the analysis.

Responsible Official

The Forest Supervisor, Carson National Forest, is the Responsible Official.

Nature of Decision To Be Made

The Forest Supervisor, as Responsible Official, may decide to: (1) Select the proposed action, (2) select one of the alternatives, (3) select one of the alternatives after modifying the alternative with additional mitigating measures or combinations of activities from other alternatives, or (4) select the no action alternative and take no action at this time.

Comment Requested

The Forest Service would like to know of any issues, concerns, and suggestions you may have about this proposal. Comments should be as fully formed as possible to assist us in the analysis. If you have any questions, or if something is unclear, contact David Seesholtz at 505.758.6210 before submitting your comments.

Although comments are welcome at any time, they will be most effective if received by November 5, 2004. Send comments to: Carson National Forest, ATTN: Jicarilla Gas Development EIS, 208 Cruz Alta Road, Taos, NM 87571.

Alternately, e-mail your comments to *comments-southwestern-carson@fs.fed.us.*

Reviewer's Obligation: Comments received in response to this solicitation, including names and address of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within seven days.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the gancy to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wisc. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at the time when it can meaningfully consider them and respond to them in the final environmental impact statement.

Authorization: National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321–4346); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); U.S. Department of Agriculture NEPA Policies and Procedures (7 CFR part 1b).

Dated: September 29, 2004.

Martin D. Chavez,

Forest Supervisor, Carson National Forest.

[FR Doc. 04–22442 Filed 10–5–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee will meet October 15, 2004, (RAC) in Willits, California. Agenda items to be covered include: (1) Approval of minutes, (2) Public Comment, (3) Sub-committees, (4) Discussion/Approval of projects (Hammerhorn Lake area, Howard Lake area, Travelers Home and Hellhole trails), (5) Matters before the group-discussion/action, (6) Next agenda and meeting date.

DATES: The meeting will be held on October 15, 2004, from 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held at the Mendocino County Museum, located at 400 E. Commercial St., Willits, California.

FOR FURTHER INFORMATION CONTACT: Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo CA 95428. (707) 983–8503; e-mail *rhurt@fs.fed.us*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by October 11, 2004. Public comment will have the opportunity to address the committee at the meeting.

Dated: September 27, 2004.

Blaine Baker,

Designated Federal Official.

[FR Doc. 04–22449 Filed 10–5–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[I.D. 100104E]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted 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 Oceanic and Atmospheric Administration (NOAA).

T*itle:* Gear-Marking Requirements for the Harbor Porpoise Take Reduction Plan.

Form Number(s): None.

OMB Approval Number: 0648–0357.

Type of Request: Regular submission.

Burden Hours: 21.

Number of Respondents: 25.

Average Hours Per Response: 1 minute.

Needs and Uses: The Federal regulations at 50 CFR 229.34 limit the number of nets that can be used in certain fisheries in the mid-Atlantic that appear to be most closely linked with accidental catch of harbor porpoises. Fishermen in these fisheries must obtain and attach numbered tags for their nets. Because the number of tags per vessel is capped, the tagging program helps to limit the number of nets in use and helps NOAA identify the number in use.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

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 6625, 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 David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David__Rostker@omb.eop.gov*.

Dated: September 29, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–22513 Filed 10–5–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 100104D]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted 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 Oceanic and Atmospheric Administration (NOAA).

Title: Sea Grant Program Application Requirements for Grants, for Sea Grant Fellowships, including the Dean John A. Knauss Marine Policy Fellowships, and for Designation as a Sea Grant College or Sea Grant Institute.

Form Number(s): NOAA Forms 90–1, 90–2, and 90–4.

OMB Approval Number: 0648–0362.

Type of Request: Regular submission.

Burden Hours: 672.

Number of Respondents: 121.

Average Hours Per Response: 30 minutes for Sea Grant Control form; 20 minutes for Project Record form; 15 minutes for Sea Grant Budget form; 20 hours for Application for Designation as a Sea Grant College or Regional Consortia; 2 hours for Application for Sea Grant Fellowships, including Dean John A. Knauss Marine Policy Fellowship.

Needs and Uses: Applications are required for the designation of a public or private institution of higher

education, institute, laboratory, or State or local agency as a Sea Grant college or Sea Grant institute. The applications are also required in order to be awarded a Sea Grant Fellowship, including the Dean John A. Knauss Marine Policy Fellowships. The grant monies are available for funding activities that help attain the objectives of the Sea Grant Program. In addition to the Standard Form–424 and other standard grant application requirements, three additional forms are required with a grant application. These are the Sea Grant Control Form, used to identify the organizations and personnel who would be involved in the grant; the Project Record Form, which collects summary data on projects; and the Sea Grant Budget Form (used in place of the SF–424a).

Affected Public: State, Local or Tribal Government; not-for-profit institutions; individuals or households.

Frequency: On Occasion, Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395-3897.

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 6625, 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 David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David__Rostker@omb.eop.gov*.

Dated: September 29, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–22514 Filed 10–5–04; 8:45 am]

BILLING CODE 3510–KA–S

DEPARTMENT OF COMMERCE

[I.D. 100104B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted 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 Oceanic and Atmospheric Administration (NOAA).

Title: Application for Commercial Fisheries Authorization under Section 118 of the Marine Mammal Protection Act.

Form Number(s): None.

OMB Approval Number: 0648–0293.

Type of Request: Regular submission.

Burden Hours: 2,800.

Number of Respondents: 12,000.

Average Hours Per Response: 15 minutes for new application; and 9 minutes for renewal application.

Needs and Uses: The Marine Mammal Protection Act (MMPA) requires any commercial fisher operating in a Category I and II fishery to register for a certificate of authorization that will allow the fisher to take marine mammals incidental to commercial fishing operations. Category I and II fisheries are those identified by NOAA as have either frequent or occasional takings of marine mammals.

Affected Public: Business or other for-profit; individuals or households.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

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 6625, 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 David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or David__Rostker@omb.eop.gov.

Dated: September 29, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–22515 Filed 10–5–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 100104C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted 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 Oceanic and Atmospheric Administration (NOAA).

Title: Reporting Requirements for the Ocean Salmon Fishery off the Coasts of Washington, Oregon, and California.

Form Number(s): None.

OMB Approval Number: 0648-0433.

Type of Request: Regular submission.

Burden Hours: 10.

Number of Respondents: 40.

Average Hours Per Response: 15 minutes.

Needs and Uses: Based on the management regime specified each year, designated regulatory areas in the commercial ocean salmon fishery off the coasts of Washington, Oregon, and California may be managed by numerical quotas. To accurately assess catches relative to quota attainment during the fishing season, catch data by regulatory area must be collected in a timely manner. The requirements to land salmon within specific time frames and in specific areas may be implemented in the preseason regulations to aid in timely and accurate catch accounting for a regulatory area. The state landing systems normally gather the data at the time of landing. If unsafe weather conditions or mechanical problems prevent compliance with landing requirements, fishermen need an alternative to allow for a safe response. Fishermen would be exempt from landing requirements so long as the appropriate notifications are made providing the name of the vessel, the port where delivery will be made, the approximate amount of salmon (by species) on board, and the estimated time of arrival.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

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 6625, 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 David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or David__Rostker@omb.eop.gov.

Dated: September 29, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–22516 Filed 10–5–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Census Advisory Committees

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Title 5, United States Code, Appendix 2, Section 10 (a)(b), we are giving notice of the following Census Advisory Committee (CAC) meetings:

- The CACs on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Native Hawaiian and Other Pacific Islander Populations, and the Hispanic Population to be held on November 8, 2004.
- A special Joint Census Advisory Committee meeting of the CACs on Race and Ethnic Populations (REAC), the Decennial CAC (DCAC), and the Chairs of the CAC of Professional Associations (CACPA) to be held on November 9, 2004.
- The DCAC meeting to be held on November 10, 2004.

The special Joint Advisory Committee Meeting on November 9 will focus on data dissemination and privacy. The meetings on November 8 and 10 will discuss decennial planning issues and other issues of committee interest. Last minute changes to the schedule are possible, which could prevent advance notification.

DATES: On Monday, November 8, 2004, the REAC meeting will begin at approximately 1 p.m. and adjourn at approximately 5 p.m. On Tuesday, November 9, 2004, the special Joint CAC meeting will begin at approximately 9 a.m. and adjourn at approximately 4:30 p.m. On Wednesday, November 10, 2004, the DCAC meeting will begin at approximately 9 a.m. and adjourn at approximately 12 noon.

ADDRESSES: The meetings will be held at the U.S. Census Bureau, 4700 Silver Hill Road, Suitland, Maryland 20233.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Building 3, Washington, DC 20233, telephone: (301) 763–2070, TTY (301) 457–2540.

SUPPLEMENTARY INFORMATION: The CACs on the African American Population, American Indian and Alaska Native Populations, the Asian Population, the Native Hawaiian and Other Pacific Islander Populations, and the Hispanic Population are composed of nine members each, appointed by the Secretary of Commerce. The Committees advise the Director of the U.S. Census Bureau on a variety of issues concerning race and ethnicity and overall 2010 decennial census concerns. The Committees provide a continuing channel of communication between the Census Bureau and the communities they represent.

The DCAC is composed of a Chair, Vice Chair, and up to 40 member organizations, all appointed by the Secretary of Commerce. The Committee considers the goals of the decennial census and data user needs for census information. The Committee provides an outside user perspective on research and design elements planned for the 2010 decennial census, which includes the American Community Survey.

The CACPA is composed of 36 members appointed by the Presidents of the American Economic Association, the American Statistical Association, the Population Association of America, and the Chairman of the Board of the American Marketing Association. The Committee advises the Director, Census Bureau, on the full range of Census Bureau programs and activities in relation to each committee's areas of expertise and focus.

A brief period will be set aside for public comment. However, individuals with extensive statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meetings. Seating is available to the public on a first-come, first-served basis.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer as soon as known, preferably two weeks prior to the meeting.

Dated: September 29, 2004.

Kathleen B. Cooper,

Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 04–22492 Filed 10–5–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–854]

Notice of Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Circular Welded Carbon-Quality Line Pipe From the Republic of Korea

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

EFFECTIVE DATE:

FOR FURTHER INFORMATION CONTACT: Patrick Edwards or Brandon Farlander, at (202) 482–8029 or (202) 482–0182, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Preliminary Determination

We preliminarily determine that certain circular welded carbon quality line pipe (''LP'') from the Republic of Korea (''Korea'') is being sold, or are likely to be sold, in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''), with regard to sales made by Hyundai HYSCO (''HYSCO''). We also preliminarily determine that LP from Korea, produced and sold by SeAH Steel Corporation (''SeAH''), is not being sold, or is not likely to be sold, in the United States at LTFV. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

On March 24, 2004, the Department initiated antidumping investigations of LP from Mexico, the Republic of Korea, and the People's Republic of China. *See Initiation of Antidumping Duty Investigations: Certain Circular Welded Carbon Quality Line Pipe From Mexico, The Republic of Korea, and the People's Republic of China,* 69 FR 16521 (March 30, 2004) (''*Initiation Notice*''). The petitioners in this investigation are American Steel Pipe Division of American Cast Iron Pipe Company, IPSCO Tubulars Inc., Lone Star Steel Company, Maverick Tube Corporation, Northwest Pipe Company, and Stupp Corporation (collectively ''petitioners''). Since the initiation of this investigation the following events have occurred.

In accordance with the preamble to our regulations, the Department set aside a period of time for parties to raise

issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. (*See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) and *Initiation Notice* at 69 FR 16521).

On April 19, 2004, Central Plastics Company (''CPC''), an interested party, submitted comments on the scope of this and the concurrent investigations of LP. Specifically, CPC requested an exclusion for line pipe having a nominal diameter of less than or equal to 1¼ inches (1.660 inch actual outside diameter), regardless of grade, from this investigation for various reasons. On April 21, 2004, petitioners submitted comments on the scope of this investigation in response to CPC's comments. Petitioners concurred with CPC, that line pipe of nominal diameter of 1¼ inch and smaller be excluded from the scope of this investigation, and that the scope be amended to state ''excluded from the scope of the investigation are line pipe in nominal size with outer diameters of 1¼ inch or less.'' No other party submitted further comments on this request and no other party submitted scope comments. On May 4, 2004, the Department amended the scope of the investigation to include line pipe having an outside diameter greater than 32 mm (1¼ inches) in nominal diameter (1.660 inch actual outside diameter) and not more than 406.4 mm (16 inches) in outside diameter. *See* Memorandum to Joseph A. Spetrini, Deputy Assistant Secretary, Group III, from Richard O. Weible, Office Director, Office 8, regarding Antidumping Duty Investigations on Certain Circular Welded Carbon Quality Line Pipe from China, Korea and Mexico; Scope Issues, dated May 4, 2004.

On April 19, 2004, The United States International Trade Commission preliminarily determined that there is reasonable indication that imports of LP from Mexico, South Korea, and the People's Republic of China are materially injuring the United States industry. *See* ITC Investigation Nos. 731–TA–1073–1075 (Publication No. 3687).

On April 29, 2004, the Department selected the producers accounting for the largest volume of the exports of subject merchandise from Korea during the period of investigation (POI) as the mandatory respondents in this proceeding. *See* Memorandum to Joseph A. Spetrini, Deputy Assistant Secretary, Group III, from Richard O. Weible, Office Director, Office 8, regarding Selection of Respondents for the Antidumping Investigation of Certain Circular Welded Carbon Quality Line Pipe from Korea, dated April 29, 2004. The Department subsequently issued the antidumping questionnaire to SeAH and Hyundai Corporation (''Hyundai'') on May 4, 2004. The Department revised its respondent selection in this investigation on June 4, 2004. *See* the ''Amended Respondent Selection'' section of this notice for further discussion.

On June 3, 2004, we issued a supplemental questionnaire on issues relating to affiliation to Hyundai and HYSCO. On June 9, 2004, and June 14, 2004, we received the Section A questionnaire responses from SeAH and HYSCO, the revised mandatory respondent following the Department's amendment to the respondent selection, respectively. On June 18, 2004, and June 24, 2004, petitioners filed comments on the Section A responses of SeAH and HYSCO, respectively. On June 23, 2004, the Department issued a supplemental questionnaire for deficiencies in SeAH's Section A response, to which SeAH subsequently submitted its response on July 9, 2004. The Department received HYSCO's response to the affiliation supplemental questionnaire on June 16, 2004.

On June 25, 2004, and June 28, 2004, the Department received Section B and C questionnaire responses from SeAH and HYSCO, respectively. On July 8, 2004, petitioners submitted comments on deficiencies in both companies' Section B and C questionnaire responses. The Department issued a supplemental Section B and C questionnaire to SeAH on July 12, 2004, and a Section A, B and C supplemental questionnaire to HYSCO on July 14, 2004. The Department received the supplemental questionnaire responses from SeAH on August 2, 2004, and from HYSCO on August 4, 2004. Petitioner submitted deficiency comments on these questionnaire responses on August 16, 2004.

On August 18, 2004, the Department issued a supplemental questionnaire for deficiencies remaining in any of the aforementioned responses from SeAH. On August 30, 2004, the Department issued a supplemental questionnaire for deficiencies remaining in any of the aforementioned responses from HYSCO. SeAH submitted its response to the Department's supplemental questionnaire on August 31, 2004. HYSCO submitted its response to the Department's supplemental questionnaire on September 8, 2004. On September 13, 2004, the Department issued a final supplemental questionnaire to SeAH. On September 14, 2004, the Department issued a supplemental questionnaire to HYSCO. On September 20, 2004, the Department issued its final supplemental questionnaire to HYSCO. SeAH submitted its response to the Department's final supplemental questionnaire on September 20, 2004. HYSCO submitted its response to the Department's September 14, 2004, supplemental questionnaire on September 24, 2004. HYSCO submitted its response to the Department's final supplemental questionnaire on September 24, 2004.

On July 9, 2004, petitioners submitted allegations of sales below cost of production (''COP'') against HYSCO and SeAH. On July 20, 2004, the Department requested petitioners to submit further information supporting their sales below cost allegation. On July 22, 2004, petitioners submitted their response to Department's request for more information on the sales below COP allegation. Upon a thorough review of petitioners' allegations, the Department initiated a sales-below-cost investigation on July 30, 2004. *See* ''Cost of Production Analysis'' section of this notice below.

On July 21, 2004, due to the complicacy of the case and pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, the Department postponed the preliminary determinations in the antidumping duty investigations of certain circular welded carbon quality line pipe from Mexico and the Republic of Korea until no later than September 29, 2004. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Circular Welded Carbon Quality Line Pipe from Mexico and the Republic of Korea*, 69 FR 44641 (July 27, 2004).

Amended Respondent Selection

On April 29, 2004, the Department selected SeAH and Hyundai as the two companies accounting for the largest volume of the exports of subject merchandise from Korea during the POI as the mandatory respondents in this proceeding. *See* Memorandum to Joseph A. Spetrini, Deputy Assistant Secretary, Group III, from Richard O. Weible, Office Director, Office 8, regarding Selection of Respondents for the Antidumping Investigation of Certain Circular Welded Carbon Quality Line Pipe from Korea, dated April 29, 2004 (''Respondent Selection Memo'').

On May 19, 2004, the Department received a request from HYSCO to rescind the investigation of Hyundai and name HYSCO as the mandatory respondent. HYSCO stated that it believed the Department had

erroneously selected Hyundai as the mandatory respondent, as Hyundai is merely a reseller of subject merchandise, a substantial proportion of which was supplied by HYSCO. Furthermore, HYSCO claimed that it had knowledge of the merchandise's U.S. destination at the time of sale to Hyundai. In accordance with 19 U.S.C. 1677m(a), HYSCO entered a request on May 24, 2004, to be included as a voluntary respondent in the investigation to receive the same additional time to complete the Section A response to the Department's antidumping questionnaire of May 4, 2004, as the other mandatory respondent, SeAH. *See* Letter from Hyundai HYSCO to the Secretary of Commerce, dated May 24, 2004.

On May 25, 2004, the Department issued a memorandum to the File, explaining that it would grant an identical length of time to HYSCO to respond to the Department's questionnaire, but that pursuant to the Respondent Selection Memo of April 29, 2004, Hyundai would remain the mandatory respondent in this investigation, not HYSCO. On May 27, 2004, the Department received a further request from Hyundai and HYSCO, that HYSCO be made a mandatory respondent in this investigation. *See* Letter from Hyundai Corporation and Hyundai HYSCO to the Secretary of Commerce, dated May 27, 2004. Department officials contacted counsel to Hyundai and HYSCO on the same day to request that both companies submit more detailed information on the official record before any decision could be made regarding the issue of amending the respondents selected, specifically requesting quantity of sales and quantity purchased for both Hyundai and HYSCO. *See* Memorandum to the File from Patrick Edwards, dated May 27, 2004. Hyundai and HYSCO subsequently submitted this information to the Department on June 2, 2004, and an analysis confirmed that Hyundai resells subject line pipe, which it purchased from HYSCO and SeAH. *See* Letter from Hyundai Corporation and Hyundai HYSCO to the Secretary of Commerce, dated June 2, 2004. SeAH also placed comments on the record, supporting the selection of HYSCO as a mandatory respondent in this investigation rather than Hyundai. *See* Letter from SeAH to the Department regarding Selection of Mandatory Respondents, dated May 28, 2004. SeAH also stated that, as a supplier to Hyundai, it too had knowledge that subject line pipe sold to Hyundai is destined for the United States. We note that petitioners did not submit any comments on this issue.

In *Antifriction Bearings*, the Department encountered a similar situation where the selected respondent provided information showing that all of its suppliers had knowledge at the time of sale that the merchandise was destined for the United States. The Department subsequently determined that the suppliers were the appropriate party to review in this case, as it was their sales that were ''first sold before the date of importation by the producer or exporter of the subject merchandise outside of the United States * * * to an unaffiliated purchaser for exportation to the United States.'' *See Antifriction Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore and the United Kingdom,* 69 FR 5949, 5951 (February 9, 2004) (*Antifriction Bearings*).

Based on the preceding evidence, the Department determined that HYSCO's claimed knowledge that its sales to Hyundai were ultimately destined for export to the United States would make HYSCO the first point of sale for the subject merchandise being shipped to the United States, and that, pursuant to section 772(a) of the Act, HYSCO, as the supplier of subject merchandise to Hyundai, would be the appropriate party to examine in this case. Therefore, the Department determined that an amendment to the respondent selection in this investigation as pertaining to Korea was appropriate, and revised the selection of mandatory respondents to include HYSCO and SeAH. See Memorandum to Richard O. Weible, Office 8 Director from Brandon Farlander and Patrick Edwards, Case Analysts regarding Amendment to the Selection of Respondents for the Antidumping Investigation of Certain Circular Welded Carbon Quality Line Pipe from the Republic of Korea, June 4, 2004.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months. On August 30, 2004, HYSCO requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. On September 20, 2004, HYSCO also included a request to extend the provisional measures from a four-month period to not more than six-months. On September 2, 2004, petitioners requested that, in the event of a negative determination or *de minimis* margins against respondents' imports, that the Department postpone the final determination in this investigation by 60 days. On September 7, 2004, SeAH requested that the Department postpone the date of the final determination by 135 days from the date of publication of the preliminary determination in the event that the preliminary determination is affirmative. On September 14, 2004, SeAH requested to extend the provisional measures from a four-month period to not more than six months.

Accordingly, because we have made an affirmative preliminary determination, and the requesting parties account for a significant proportion of exports of the subject merchandise, we are postponing the final determination until not later than 135 days after the date of the publication of the preliminary determination.

Period of Investigation

The POI is January 1, 2003, through December 31, 2003. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, *i.e.,* March 2004.

Scope of Investigation

The scope of this investigation includes certain circular welded carbon quality steel line pipe of a kind used in oil and gas pipelines, over 32 mm (1¼ inches) in nominal diameter (1.660 inch actual outside diameter) and not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, or coated with any coatings compatible with line pipe), and regardless of end finish (plain end, beveled ends for welding, threaded ends or threaded and coupled, as well as any other special end finishes), and regardless of stenciling. The merchandise subject to this investigation may be classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at heading

7306 and subheadings 7306.10.10.10, 7306.10.10.50, 7306.10.50.10, and 7306.10.50.50. The tariff classifications are provided for convenience and Customs purposes; however, the written description of the scope of the investigation is dispositive.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all LP produced and sold by the respondents in Korea during the POI that fit the description in the ''Scope of Investigation'' section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market. Where there were no sales of identical merchandise in the home market in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. Where there were no sales of identical or similar merchandise made in the ordinary course of trade, we made product comparisons using constructed value (''CV'').

In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: Epoxy coating, grade, outside diameter, wall thickness, surface finish, and end finish.

In response to the Department's solicitation of comments on product characteristics, petitioners submitted remarks on the draft model match characteristics issued on April 30, 2004. In their request, petitioners urged the Department to revise the size ranges for the ''outer diameter,'' wall thickness characteristics, and the deletion of ''weld type'' characteristic. On May 12, 2004, Mexican respondent Hylsa S.A. de C.V. (''Hylsa'') submitted its comments, in which it requested that the Department revise its product-matching characteristics to give the greatest weight to the existence or absence of an epoxy coating. Also on May 12, 2004, SeAH submitted comments. SeAH noted that while the Department's proposed model match of May 4, 2004 contemplated matching to specific sizes of wall thickness and outside diameter, petitioners' April 30, 2004 comments suggested matching for outside diameter and wall thickness using ranges. SeAH urged the Department not to provide arbitrary limitations on ranges.

Upon careful analysis of comments from all parties, on May 21, 2004, the Department made appropriate changes to the model match criteria and asked both SeAH and Hyundai to use the revised model match criteria in answering their Sections B and C of the Department's questionnaire. The Department accepted Hylsa's suggestion of giving the greatest weight to the existence or absence of an epoxy coating, as Hylsa demonstrated that such a coating can add substantially to the cost of a product. We accepted petitioners' proposed ranges for outside diameter and wall thickness as the Department's examination of industry specifications indicated that the ranges were a reasonable reflection of the production of the merchandise in question and were not arbitrary.

Affiliation

HYSCO acknowledges, in their June 14, 2004, Section A Questionnaire Response at page 6, that they were affiliated to Hyundai and Hyundai U.S.A. for the first eight months of the POI (i.e., January 2003–August 2003). Up until the death of M.H. Jung, HYSCO reported its sales made to Hyundai and Hyundai U.S.A. as CEP transactions. HYSCO reported all sales to Hyundai and Hyundai U.S.A. following the death of M.H. Jung in August 2003 as EP transactions. Because M.H. Jung had died, HYSCO claims that it is no longer affiliated with Hyundai and Hyundai U.S.A. after his death. In HYSCO's questionnaire response, it stated that at the end of August 2003, due to financial difficulties, Hyundai was turned over to the control of its creditors and that this further demonstrated the end of any potential affiliation between HYSCO and Hyundai. *See* HYSCO's June 14, 2004, Section A Questionnaire Response at page 6. On September 24, 2004, HYSCO provided additional information demonstrating that Hyundai had declared bankruptcy and that its creditors took control of the company. Also, in this same response, HYSCO provided a list of Hyundai's major creditors and confirmed that Hyundai's creditors were not affiliated with any member of the Hyundai Group *chaebol* (including Hyundai and Hyundai U.S.A.) or any member of the Hyundai Motors Group *chaebol* (including HYSCO). Based on this information, the Department preliminarily determines that HYSCO's affiliation with Hyundai, Hyundai U.S.A, and all members of the Hyundai Group *chaebol* ended on August 31, 2003, and that, from this date to the end of the POI, all of HYSCO's sales to Hyundai and Hyundai U.S.A. therefore constitute EP sales.

Fair Value Comparisons

To determine whether sales of certain circular welded carbon-quality line pipe from Korea to the United States were made at LTFV, we compared the export price (''EP'') or constructed export price (''CEP'') to the normal value (''NV''), as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs or CEPs to NVs, and where there were no similar product matches, we compared EP or CEP to CV.

As discussed below under ''Home Market Viability and Comparison Market Selection,'' we determined that SeAH and HYSCO had a viable home market during the POI.

Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, export price is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c). In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).

1. HYSCO

For purposes of this investigation, HYSCO has classified its sales as both EP and CEP. Based on the Department's decision on affiliation in the ''Affiliation'' section noted above, we determined that affiliation between HYSCO and Hyundai and Hyundai U.S.A. ended on August 31, 2003, the day Hyundai declared bankruptcy and its creditors took control of the company. Hence, on and after August 31, 2003, until the end of the POI, the Department has determined that HYSCO's sales to Hyundai Corporation and Hyundai U.S.A. are EP sales. We note that this decision does not impact the fact that HYSCO is affiliated with Hyundai Pipe of America during the entire POI and that these sales through Hyundai Pipe of America are classified as CEP sales.

For HYSCO's EP sales, we made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where

appropriate, foreign inland freight from the plant to the port of export, foreign brokerage and handling expenses, international freight, marine insurance, U.S. brokerage, and U.S. customs duty, where applicable. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. *See* Memorandum to the File Re: Preliminary Determination Analysis Memorandum for Hyundai HYSCO (''HYSCO'') in the Antidumping Investigation of Certain Circular Welded Carbon Quality Line Pipe from the Republic of Korea for the Period January 1, 2003, through December 31, 2003, dated September 29, 2004 (''HYSCO Analysis Memo'').

For HYSCO's CEP sales transactions, we calculated price in conformity with section 772(b) of the Act. We based CEP on the packed duty paid prices to an unaffiliated purchaser in the United States. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight from the plant to the port of export, foreign brokerage and handling expenses, international freight, marine insurance, U.S. brokerage, and U.S. customs duty, where applicable. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. We also deducted commissions, where applicable. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including imputed credit expenses, warranty expenses, and indirect selling expenses. We also made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act. *See* HYSCO Analysis Memo.

2. SeAH

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by, or for the account of, the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d).

In the instant investigation, SeAH sold subject merchandise through two affiliated companies, Pusan Pipe America, Inc. (''PPA'') and State Pipe & Supply, Inc. (''State Pipe''), an affiliated reseller of PPA, both of Santa Fe Springs, California. SeAH reported all of its U.S. sales of subject merchandise as CEP transactions. After reviewing the evidence on the record of this investigation, we have preliminarily determined that SeAH's transactions are classified properly as CEP sales because these sales occurred in the United States and were made through its U.S. affiliate(s) to an unaffiliated buyer. Such a determination is consistent with section 772(b) of the Act and the U.S. Court of Appeals for the Federal Circuit's decision in *AK Steel Corp.,* et al. v. *United States,* 226 F.3d 1361, 1374 (Fed. Cir. 2000) (''*AK Steel*'').

For these CEP sales transactions, we calculated price in conformity with section 772(b) of the Act. We based CEP on the packed, delivered duty paid prices to an unaffiliated purchaser in the United States. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight, foreign brokerage and handling and port charges, international freight, marine insurance, U.S. inland freight, U.S. brokerage and handling, U.S. warehousing, and U.S. wharfage. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including imputed credit expenses and indirect selling expenses. We also made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act. *See* Memorandum to the File Re: Preliminary Determination Analysis Memorandum for SeAH Steel Corporation (''SeAH'') in the Antidumping Investigation of Certain Circular Welded Carbon Quality Line Pipe from the Republic of Korea for the Period January 1, 2003, through December 31, 2003, dated September 29, 2004.

Normal Value

A. Home Market Viability and Comparison Market Selection

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

In this investigation, we determined that both HYSCO's and SeAH's aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV in accordance with section 773(a)(1)(B) of the Act. We also used CV as the basis for calculating NV, in accordance with section 773(a)(4) of the Act, for those sales that did not have identical or similar product matches.

B. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the export transaction. The NV LOT is that of the starting-price sales in the comparison market. For CEP, it is the level of the constructed sale from the exporter to the importer. We consider only the selling activities reflected in the U.S. price after the deduction of expenses incurred in the United States and CEP profit under section 772(d) of the Act. *See Micron Technology Inc.* v. *United States,* 243 F.3d 1301, 1314–15 (Fed. Cir. 2001).

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affect price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP Offset provision). *See, e.g., Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value,* 62 FR 61731, 61733 (November 19, 1997).

In analyzing differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27371 (May 19, 1997). If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain-on-Steel Cookware from Mexico: Final*

Results of Administrative Review, 65 FR 30068 (May 10, 2000).

1. SeAH

In this investigation, we obtained information from SeAH regarding the marketing stages involved in making the reported home market and U.S. sales. In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''),[1] including selling functions, class of customer (''customer category''), and the level of selling expenses for each type of sale. SeAH reported that it sells to distributors and end users in the home market, and to its U.S. affiliates, PPA and State Pipe, for sale to the United States. We examined the information reported by SeAH and found that home market sales to both customer categories were identical with respect to selling functions and stages of marketing. Accordingly, we preliminarily find that SeAH had only one LOT for its home market sales.

SeAH states that it is not claiming a LOT adjustment because it has no home market sales that are at the same LOT as that of its CEP sales, and therefore, it cannot quantify an LOT adjustment. SeAH claims that a CEP offset is warranted. *See* SeAH's Section A Questionnaire Response of December 8, 2003, at page 21 and Exhibit A–15. For its CEP sales, SeAH reported a single level of trade and three channels of distribution. We examined the selling functions provided across these channels and find that they are essentially identical, differing only with respect to inventory maintenance and freight. Therefore, we preliminarily agree that there is only one LOT with regard to SeAH's CEP sales in the United States.

According to section 773(a)(7)(B) of the Act, a CEP offset is appropriate when the LOT in the home market is at a more advanced stage than the LOT of the CEP sales. To determine whether a CEP offset adjustment is warranted, we compared SeAH's selling functions in the home market with the selling functions for U.S. sales to its affiliates, PPA and State Pipe. We note that SeAH claimed several common selling activities in both the home and U.S. market, but after an analysis of these functions, the Department has determined the following activities are not ''selling functions'' within the meaning of section 773(a)(7) of the Act, and are not relevant to the level of trade analysis. These functions include: computer, legal, accounting, audit, and/or business-systems development, engineering services, research and development and technical programs. SeAH also claimed packing as a selling function performed for all customers. However, we did not consider this to be a selling function relevant to LOT, as packing is a separate circumstance of sale (''COS'') adjustment.

SeAH reported that the selling activities associated with its CEP sales differ from the home market selling activities in that sales forecasting, strategic and economic planning, arranging import documentation, serving as importer of record, paying U.S. customs duties and wharfage, cash discounts, and warranty service are exclusive to the U.S. market. After analyzing these functions in the context of a more advanced or less advanced LOT, the Department has determined the following. *Serving as importer of record and paying U.S. customs duties and wharfage* are not considered selling functions in the analysis of LOT because neither is distinguishable as a function that requires further personnel or monetary expense during the pre-sale process; the Department furthermore does not consider cash discounts to be a selling function. Further, we make a separate COS adjustment for discounts (as well as for U.S. customs duties and wharfage) and, thus, do not consider these activities as selling functions for our LOT analysis.

A final analysis of SeAH's claimed home market and U.S. CEP selling functions indicates that the selling functions provided by SeAH in both markets only differ by two selling functions (*i.e.*, forecasting and planning, and arranging import documentation). Based on the above analysis, we preliminarily find that the selling functions provided for sales in the home market and sales in the U.S. market do not substantially differ and do not constitute a different LOT. Therefore, we preliminarily find that the CEP LOT is similar to the home market LOT and a CEP offset is not necessary, in accordance with Section 773(a)(7)(B) of the Act.

2. HYSCO

In this investigation, we obtained information from HYSCO regarding the marketing stages involved in making the reported home market and U.S. sales. In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''), including selling functions, class of customer (''customer category''), and the level of selling expenses for each type of sale. HYSCO reported that it sells to distributors and end users in the home market, and to its U.S. affiliates, Hyundai U.S.A. (for a portion of the POI), and Hyundai Pipe of America, for sale to the United States. We examined the information reported by HYSCO and found that home market sales to both customer categories were identical with respect to selling functions and stages of marketing. Accordingly, we preliminarily find that HYSCO had only one LOT for its home market sales.

HYSCO states that it is not claiming an LOT adjustment because the starting prices of sales to the United States are at the same level of trade as the starting prices of home market sales. Also, HYSCO is not claiming a CEP offset. We note that HYSCO had EP and CEP sales. Based on an analysis of HYSCO's selling functions for EP sales, we determine that these selling functions are essentially the same, with the exception that HYSCO performs inventory maintenance to a small degree in the home market but does not provide inventory maintenance in the U.S. market for its EP sales. Also, we note that HYSCO claimed several common selling activities in both the home and U.S. market, but that after an analysis of these functions, the Department has determined that a portion of these functions are not relevant to the LOT analysis as ''selling functions.'' These functions include: (1) Legal, accounting, audit, and/or business-systems development; (2) engineering services; and (3) research and development and technical programs. HYSCO also claimed packing as a selling function performed for all customers. However, we did not consider this to be a selling function relevant to LOT as packing is a separate COS adjustment. Hence, we determine that HYSCO's EP sales and home market sales are at the same LOT.

Regarding HYSCO's CEP sales, as it did not request an LOT adjustment, HYSCO did not provide information on the record pertaining to the selling functions and marketing stages for sales through its U.S. affiliates. Hence, there is not sufficient evidence to determine the degree of performance or number of selling functions provided in HSYCO's U.S. CEP sales.

Therefore, we preliminarily determine that there is no basis for determining

[1] The marketing process in the United States and home market begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered each respondent's narrative response to properly determine where in the chain of distribution the sale occurs.

that there is a distinct, less advanced LOT for U.S. sales than for home market sales. Therefore, no LOT adjustment or CEP offset is warranted.

C. Cost of Production Analysis

Based on a cost allegation submitted by the petitioners pursuant to 19 CFR 351.301(d)(2)(ii), we found reasonable grounds to believe or suspect that HYSCO and SeAH made sales of the foreign like product at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by both HYSCO and SeAH. *See* Memorandum from Brandon Farlander and Patrick Edwards, Case Analysts, and Trinette Ruffin and Michael Martin, Case Accountants, to Richard O. Weible, Office Director, regarding Petitioner's Allegation of Sales Below the Cost of Production for Hyundai HYSCO, July 30, 2004, and Memorandum from Brandon Farlander and Patrick Edwards, Case Analysts, and Trinette Ruffin and Michael Martin, Case Accountants, to Richard O. Weible, Office Director, regarding Petitioner's Allegation of Sales Below the Cost of Production for SeAH Steel Corporation, July 30, 2004, on file in the Central Records Unit. The Department has conducted an investigation to determine whether HYSCO and SeAH made home market sales at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

Pursuant to the Department's decision to initiate a sales-below-cost investigation with regard to both companies, we instructed HYSCO and SeAH to submit its responses to Section D of the Department's antidumping questionnaire. SeAH submitted its response to the Section D questionnaire on August 23, 2004, and its response to the Department's Section D supplemental questionnaire of September 2, 2004, on September 20, 2004. HYSCO submitted its response to the Section D questionnaire on September 8, 2004. The Department issued a final supplemental for Section D to HYSCO on September 24, 2004, the response to which will be submitted after these preliminary determinations.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market G&A expenses, interest expenses, and packing expenses. For HYSCO, we relied on the COP data submitted by HYSCO except that we adjusted the financial expense ratio to include HYSCO's gains and losses on currency forward transactions as presented in their financial statements. We also excluded the short-term interest income offset because there was not enough information on the record to substantiate the split of interest income presented in their financial statements between short and long-term interest income. As a result of these changes, the financial expense ratio increased. *See* Memorandum regarding Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination—Hyundai HYSCO Co., Ltd. from Margaret M. Pusey, Accountant, through Michael P. Martin, Program Manager, to Neal M. Halper, Director, Office of Accounting, dated September 29, 2004. For SeAH, we relied on the COP data submitted by SeAH except that we adjusted the financial expense ratio to include SeAH's *donation expense* that it had excluded from the calculation of the GNA expense rate. Thus, we included the donation expense in the GNA expense rate calculation. As a result of this change, the financial expense ratio increased. *See* Memorandum regarding Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination—SeAH Steel Corporation from Ji Young Oh, Accountant, through Michael P. Martin, Program Manager, to Neal M. Halper, Director, Office of Accounting, dated September 29, 2004.

2. Test of Home Market Sales Prices

We compared the weighted-average COP for HYSCO and SeAH to their home-market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model-specific basis, we compared the revised COP to the home market prices, less any applicable movement charges, discounts, rebates, and direct and indirect selling expenses.

3. Results of the COP Test

We disregarded below-cost sales where (1) 20 percent or more of HYSCO's and SeAH's sales of a given product during the POI were made at prices below the COP, and thus such sales were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on comparisons of price to weighted-average COPs for the POI, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act. We found that both HYSCO and SeAH made sales below cost and we disregarded such sales where appropriate.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NVs based on delivered prices to unaffiliated customers. For HYSCO, we made deductions for movement expenses, including inland freight and warehousing under section 773(a)(6)(B)(ii) of the Act, by deducting the actual costs incurred by HYSCO, where applicable. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for warranty and imputed credit, where applicable. For SeAH, we made deductions for movement expenses, including inland freight and brokerage and handling under section 773(a)(6)(B)(ii) of the Act, by deducting the actual costs incurred by SeAH and adding the revenue earned, where applicable. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for discounts, rebates and other direct selling expenses, where applicable. For SeAH and HYSCO, we also added U.S. packing costs and deducted home market packing in accordance with section 773(a)6(A) and (B) of the Act.

E. Calculation of Normal Value Based on Constructed Value

In accordance with section 773(a)(4) of the Act, we based HYSCO's and SeAH's NV on CV where there were no comparable sales in the home market made in the ordinary course of trade.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of HYSCO's and SeAH's cost of materials and fabrication for the foreign like product, plus amounts for SG&A, interest, profit, and U.S. packing costs. We calculated the cost of materials and fabrication, G&A and interest based on the methodology described in the ''Calculation of COP'' section of this notice.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the

exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify the information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which NV exceeds EP or CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percentage)
Hyundai HYSCO	6.49
SeAH Steel Corporation Ltd.	[1]1.19
All Others	6.49

[1] *De minimis.*

The All Others rate is derived exclusive of all zero and de minimis margins and margins based entirely on adverse facts available.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination of sales at LTFV. Section 735(b)(2) requires that the ITC make a final determination before the later of 120 days after the date of the Department's preliminary determination or 45 days after the Department's final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise. Because we have postponed the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, the ITC will make its final determination within 45 days of our final determination.

Disclosure

We will disclose the calculations used in our analysis, within five days of publication of this notice, to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: September 29, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2522 Filed 10–5–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–833]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Circular Welded Carbon-Quality Line Pipe From Mexico

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

EFFECTIVE DATE: October 6, 2004.

FOR FURTHER INFORMATION CONTACT: Shireen Pasha or John Drury, at (202) 482–0193 or (202) 482–0195, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Preliminary Determination

We preliminarily determine that certain circular welded carbon quality line pipe (''LP'') from Mexico is being sold, or is likely to be sold, in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

On March 24, 2004, the Department of Commerce (''the Department'') initiated antidumping investigations of LP from Mexico, The Republic of Korea, and the People's Republic of China. *See Certain Circular Welded Carbon Quality Line Pipe From Mexico, The Republic of Korea, and the People's Republic of China; Initiation of Antidumping Duty Investigations, 69 FR 165211* (March 30, 2004) (''Initiation Notice''). The petitioners in this investigation are American Steel Pipe Division of American Cast Iron Pipe Company, IPSCO Tubulars Inc., Lone Star Steel Company, Maverick Tube Corporation, Northwest Pipe Company, and Stupp Corporation. Since the initiation of this investigation the following events have occurred.

In accordance with the preamble to our regulations, the Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice.* (*See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323* (May 19, 1997) and *Initiation Notice* at 69 FR 16521.)

On April 19, 2004, Central Plastics Company (''CPC''), an interested party,

submitted comments on the scope of this and the concurrent investigations of LP from South Korea and the People's Republic of China. Specifically, CPC requested an exclusion for line pipe having a nominal diameter of less than or equal to 1¼ inches (1.660 inch actual outside diameter), regardless of grade, from this investigation for various reasons. On April 21, 2004, petitioners submitted comments on the scope of this investigation in response to CPC's comments. Petitioners concurred with CPC, that line pipe of a nominal diameter of 1¼ inch and smaller be excluded from the scope of this investigation, and that the scope be amended to state ''excluded from the scope of the investigation are line pipe in nominal size with outer diameters of 1¼ inch or less.'' No other party submitted further comments on this request and no other party submitted scope comments. On May 4, 2004, the Department amended the scope of the investigation to include line pipe having an outside diameter greater than 32 mm (1¼ inches) in nominal diameter (1.660 inch actual outside diameter) and not more than 406.4 mm (16 inches) in outside diameter. *See* Memorandum to Joseph A. Spetrini, Deputy Assistant Secretary, Group III, from Richard O. Weible, Office Director, Office 8, regarding Antidumping Duty Investigations on Certain Circular Welded Carbon Quality Line Pipe from China, Korea and Mexico; Scope Issues, dated May 4, 2004.

On April 19, 2004, the United States International Trade Commission (''ITC'') preliminarily determined that there is reasonable indication that imports of LP from Mexico, South Korea, and the People's Republic of China are materially injuring the United States industry. *See* ITC Investigation Nos. 731–TA–1073–1075 (Publication No. 3687).

On May 3, 2004, the Department selected the producers accounting for the largest volume of the exports of subject merchandise from Mexico during the period of investigation (''POI'') as the mandatory respondents in this proceeding. *See* Memorandum to Joseph A. Spetrini, Deputy Assistant Secretary, Group III, from Richard O. Weible, Office Director, Office 8, regarding Selection of Respondents for the Antidumping Investigation of Certain Circular Welded Carbon Quality Line Pipe from Mexico, dated May 3, 2004. The Department subsequently issued antidumping questionnaires to Hylsa S.A. de C.V. (''Hylsa'') and Tuberia Nacional, S.A. de C.V. (''TUNA'') on May 4, 2004.

On June 2, 2004, we received section A questionnaire responses from Hylsa and TUNA. On June 15, 2004, petitioners filed comments on Hylsa's and TUNA's section A responses.

On June 22, 2004, the Department issued a supplemental questionnaire for deficiencies in Hylsa's and TUNA's section A responses.

On June 23, 2004, TUNA submitted a letter stating that it would not respond to the remainder of the Department's questionnaires due to problems with its computer and accounting systems. Specifically, TUNA stated it was unable to provide the information requested in the sections B and C questionnaires, and that it would not respond to section D of the questionnaire. As a result, the Department is resorting to the use of facts available in order to calculate TUNA's margin. *See* the ''Use of Facts Available'' section of this notice for further discussion.

On June 24, 2004, Hylsa submitted its response to sections B and C. On July 6, 2004, petitioners filed comments on Hylsa's section B and C responses. On July 9, 2004, Hylsa submitted its response to the supplemental section A questionnaire. On July 13, 2004, the Department issued a supplemental questionnaire for deficiencies in Hylsa's section B and C responses. On August 2, 2004, Hylsa filed its response to the supplemental sections B and C questionnaire. On August 24, 2004, the Department issued a second supplemental questionnaire for deficiencies remaining in any of the aforementioned responses from Hylsa. On September 3, 2004, Hylsa submitted its response to the Department's final supplemental questionnaire.

On July 9, 2004, petitioners submitted allegations of sales below cost of production (''COP'') against Hylsa. On July 20, 2004, the Department requested petitioners to submit further information supporting their sales below cost allegation. On July 22, 2004, petitioners submitted their response to Department's request for more information on the sales below COP allegation. Upon a thorough review of petitioners' allegations, the Department initiated a sales below COP investigation on July 30, 2004. *See* ''Cost of Production Analysis'' section of this notice below.

On August 23, 2004, Hylsa submitted its response to section D (cost of production). On September 1, 2004, petitioners submitted comments on Hylsa's August 23, 2004, submission. On September 3, 2004, the Department issued a supplemental questionnaire on section D. On September 16, 2004, the Department issued a second supplemental questionnaire on section D. On September 21, 2004, Hylsa submitted its response to the Department's September 3 and September 16 supplemental questionnaires.

On July 21, 2004, due to the complexity of the case and pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, the Department postponed the preliminary determinations in the antidumping duty investigations of certain circular carbon quality line pipe from Mexico and the Republic of Korea until not later than September 29, 2004. *See Certain Circular Welded Carbon Quality Line Pipe from Mexico and the Republic of Korea; Postponement of Preliminary Determinations of Antidumping Duty Investigations, 69 FR 44641* (July 27, 2004).

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months. On September 17, 2004, Hylsa requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. In its request, Hylsa consented to the extension of provisional measures to no longer than two months. Since this preliminary determination is affirmative, the request for postponement is made by an exporter that accounts for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register** and have extended provisional measures to no longer than two months.

Period of Investigation

The POI is January 1, 2003, through December 31, 2003. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, *i.e.,* March 2004.

Scope of Investigation

The scope of this investigation includes certain circular welded carbon quality steel line pipe of a kind used in oil and gas pipelines, over 32 mm (1¼ inches) in nominal diameter (1.660 inch actual outside diameter) and not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, or coated with any coatings compatible with line pipe), and regardless of end finish (plain end, beveled ends for welding, threaded ends or threaded and coupled, as well as any other special end finishes), and regardless of stenciling. The merchandise subject to this investigation may be classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at heading 7306 and subheadings 7306.10.10.10, 7306.10.10.50, 7306.10.50.10, and 7306.10.50.50. The tariff classifications are provided for convenience and Customs purposes; however, the written description of the scope of the investigation is dispositive.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all LP produced and sold by the respondents in Mexico during the POI that fit the description in the ''Scope of Investigation'' section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market. Where there were no sales of identical merchandise in the home market in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. Where there were no sales of identical or similar merchandise made in the ordinary course of trade, we made product comparisons using constructed value (''CV'').

In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: epoxy coating, grade, outside diameter, wall thickness, surface finish, and end finish.

In response to the Department's solicitation of comments on product characteristics, petitioners submitted remarks on the draft model-match characteristics issued on April 30, 2004. In their request, petitioners urged the Department to revise the size ranges for the outer diameter, wall thickness characteristics, and the deletion of weld type characteristic. On May 12, 2004, Hylsa submitted its comments, in which it requested that the Department revise its product-matching characteristics to give the greatest weight to the existence or absence of an epoxy coating. Also on May 12, 2004, Korean respondent SeAH Steel Corp. (''SeAH'') submitted comments. SeAH noted that while the Department's proposed model-match of May 4, 2004 contemplated matching to specific sizes of wall thickness and outside diameter, petitioners' April 30, 2004 comments suggested matching for outside diameter and wall thickness using ranges. SeAH urged the Department not to provide arbitrary limitations on ranges.

Upon careful analysis of comments from all parties, on May 21, 2004, the Department made changes to the model-match criteria and asked both Hylsa and TUNA to use the revised model-match criteria in answering sections B and C of the Department's questionnaire. The Department accepted Hylsa's suggestion of giving the greatest weight to the existence or absence of an epoxy coating, as Hylsa demonstrated that such a coating can add substantially to the cost of a product. We accepted petitioners' proposed ranges for outside diameter and wall thickness as the Department's examination of industry specifications indicated that the ranges were a reasonable reflection of the production of the merchandise in question and were not arbitrary.

Fair Value Comparisons

To determine whether sales of certain circular welded carbon-quality line pipe from Mexico to the United States were made at LTFV, we compared the export price (''EP'') to the normal value (''NV''), as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs to NVs, and where there were no similar product matches, we compared EP to CV.

We used the date of invoice as the date of sale for all home market and U.S. sales made by Hylsa during the POI.

As discussed below under ''Home Market Viability and Comparison Market Selection,'' we determined that Hylsa had a viable home market during the POI.

Export Price

Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection 772(c) of the Act. We used EP methodology for Hylsa, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States before importation. We based EP on the prices of subject merchandise delivered and duty paid to unaffiliated purchasers in the United States.

In accordance with section 772(c)(2) of the Act, we made deductions from the starting price for movement expenses, brokerage and duties, discounts, billing adjustments, and rebates, where appropriate. In the case of inland freight, the Department added to the gross unit price the difference of the amount Hylsa charged its customers, and the actual freight costs incurred by Hylsa. *See* Memorandum to the File, regarding Preliminary Determination Analysis Memo for Hylsa, S.A. de C.V. (''Hylsa'') in the Antidumping Investigation of Certain Circular Welded Carbon Quality Line Pipe from Mexico for the Period January 1, 2003, through December 31, 2003, dated September 29, 2004.

Normal Value

A. Home Market Viability and Comparison Market Selection

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

In this investigation, we determined that Hylsa's aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV in accordance with section 773(a)(1)(B) of the Act. We also used CV as the basis for calculating NV, in accordance with section 773(a)(4) of the

Act, for those sales that did not have identical or similar product matches.

B. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP transaction. The NV LOT is that of the starting-price sales in the comparison market. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether comparison-market sales are at a different LOT than EP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

In implementing these principles in this investigation, we obtained information from Hylsa about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondent for each channel of distribution they may have. In identifying LOTs for EP and home market sales, we considered the selling functions reflected in the starting price before any adjustments.

In conducting our LOT analysis for Hylsa, we examined the specific types of customers, the channels of distribution, and the selling practices of the respondent. Generally, if the reported LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party reports LOTs that are different for different categories of sales, the functions and activities should be dissimilar.

Through our analysis, we found that Hylsa sold LP to two types of customers in the U.S. and home market: distributors and end users. In addition, Hylsa made sales of LP in the U.S. and home market through one channel of distribution: sales to unaffiliated customers. The selling activities in both markets were essentially identical. Therefore, we preliminarily find these sales channels at the same LOT. Accordingly, the Department did not find any differences sufficient enough to warrant an adjustment for LOT pursuant to section 773(a)(7)(A).

C. Cost of Production Analysis

Based on allegations by the petitioners, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that LP sales were made in Mexico at prices below COP. *See* Memorandum from John Drury and Shireen Pasha, Case Analysts, to Richard Weible, Office Director, regarding Petitioners' Allegation of Sales Below the Cost of Production for Hylsa S.A. de C.V., dated July 30, 2004. As a result, the Department has conducted an investigation to determine whether Hylsa made home market sales at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for G&A expenses, and interest expenses.

In its section D response, Hylsa explained that its cost accounting system does not distinguish cost differences between individual products within production stages. Hylsa stated that its normal cost calculations do not track cost differences due to the use of different raw materials or different production times. Thus, Hylsa's reported costs did not represent product- or CONNUM-specific costs. Product-specific costs are necessary in order to calculate the difference-in-merchandise adjustment, and thus, are a requirement for a proper price-to-price comparison when comparing non-identical products. Product specific costs are also necessary in order to perform a sales below cost test.

We requested that Hylsa identify the cost and production differences that give rise to each physical characteristic and, starting from the costs per their normal records, to use other available accounting and production data to differentiate product costs. Further, we requested an explanation for little or no associated cost differences due to physical characteristics. In response, Hylsa revised their reported costs and have accounted for cost differences associated with steel grades, pipe wall thickness and diameter, as well as end finishing, coating, and surface finishing. Thus, we used the COP data submitted by Hylsa in its supplemental cost questionnaire responses.

2. Test of Home Market Sales Prices

We compared the weighted-average COP for Hylsa to its home market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model-specific basis, we compared the revised COP to the home market prices, less any applicable movement charges, discounts, rebates, and direct and indirect selling expenses.

3. Results of the COP Test

We disregarded below-cost sales where (1) 20 percent or more of Hylsa's sales of a given product during the POI were made at prices below the COP, and thus such sales were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on comparisons of price to weighted-average COPs for the POI, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act. We found that Hylsa made sales below cost as described above and we disregarded such sales where appropriate.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated Hylsa's NV based on delivered prices to unaffiliated customers. We made deductions for movement expenses, including inland freight, and brokerage and handling under section 773(a)(6)(B)(ii) of the Act, by deducting the actual costs incurred by Hylsa and adding the revenue earned. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for discounts and rebates and other direct selling expenses. We also deducted home market packing costs and added U.S. packing costs to the starting price in accordance with section 773(a)6(A) and (B) of the Act.

E. Calculation of Normal Value Based on Constructed Value

In accordance with section 773(a)(4) of the Act, we based Hylsa's NV on CV where there were no comparable sales in the home market made in the ordinary course of trade, or where all sales of comparable merchandise failed the cost test.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Hylsa's cost of materials and fabrication for the foreign like product, plus amounts for SG&A, profit, and U.S. packing costs. We calculated the cost of materials and fabrication, G&A and interest based on the methodology described in the ''Calculation of COP'' section of this notice. We made adjustments to CV for differences in circumstances of sale in accordance with section 773(a) of the Act and 19 CFR 351.410.

Use of Facts Otherwise Available

For the reasons discussed below, we determine that the use of total adverse facts available is appropriate for the preliminary determination with respect to TUNA.

Section 776(a)(1) of the Act mandates that the Department use the facts available if necessary information is not available on the record of the proceeding. In addition, section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides such information but the information cannot be verified, the Department shall, subject to sections 782(d) and (e) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(d) of the Act provides that if the Department determines that a response to a request for information does not comply with the Department's request, the Department shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act further states that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this case, TUNA has failed to provide information requested by the Department that is necessary to calculate dumping margins. As explained above, TUNA refused to respond to sections B (home market sales & adjustments) and C (U.S. sales & adjustments), and supplemental section A questionnaires. TUNA also indicated it would not respond to section D of the questionnaire covering cost of production data. We note that we cannot perform an antidumping analysis solely on the basis of the section A response provided by TUNA. This limited information is so incomplete that it cannot, for purposes of section 782(e)(3), ''serve as a reliable basis for reaching the applicable determination.'' Therefore, we are unable to use this information and must resort to facts otherwise available. Pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have used total facts available for TUNA because it did not provide the data we needed to determine whether it had sold subject merchandise to the United States at LTFV.

In applying facts otherwise available, section 776(b) of the Act further provides that the Department may use an inference that is adverse to the interests of that party, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information.'' Because TUNA failed to respond to our repeated requests for information, and informed the Department it would not respond to all questionnaires, we have found that it failed to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act, we have used an adverse inference in selecting from the facts available for the margin for TUNA.

An adverse inference may include reliance on information derived from the petition, or any other information placed on the record. *See* section 776(b). As adverse facts available, we used the EP and NV alleged by petitioners in their March 19, 2003, amendment to the petition. *See* Preliminary Determination in the Antidumping Investigation of Certain Circular Welded Carbon Quality Line Pipe: Total Adverse Facts Available Corroboration Memorandum, from John Drury and Shireen Pasha, Case Analysts, to Abdelali Elouaradia, Program Manager, dated September 14, 2004 (''Corroboration Memo'').

We note that information from the petition constitutes ''secondary information.'' *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, at 870 (1994) (SAA). Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for facts available by reviewing independent sources reasonably at its disposal. The Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, at 870 (1994) (SAA), provides that the word ''corroborate'' means that the Department will satisfy itself that the secondary information used has probative value. As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Review, 61 FR 57391, 57392* (November 6, 1996) (''*TRBs*''), in order to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.

The petitioners' methodology for calculating the EP and normal value in the petition is discussed in the initiation notice. *See Initiation Notice* at 16523. To corroborate the petitioners' EP and normal-value calculations, we compared the prices and expenses in the petition to the prices and expenses submitted by the other responding company, Hylsa, for comparable products where appropriate. We were able to corroborate petitioners' allegations of EP and NV. Specifically, and as further discussed in our Corroboration Memo, we find that the petition information is reliable when compared to Hylsa's prices and expenses. *See* Corroboration Memo.

We further note that, with respect to the relevance aspect of corroboration, the Department stated in TRBs that it will ''consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin.'' *See TRBs at 61 FR 57392. See also Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996)* (disregarding the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin).

In this case, there is no information on the record that demonstrates that the rate we have selected is an inappropriate total adverse facts-

available rate for TUNA. On the contrary, the record supports the use of this rate as the best indication of the EP, and the dumping margin for TUNA. Therefore, we consider the selected rate to have probative value with respect to the firm in question and to reflect the appropriate adverse inference.

Accordingly, for the preliminary determination, the margin for TUNA is 31.34 percent, which is the highest estimated dumping margin set forth in the notice of initiation. *See Initiation Notice*, 69 FR 16523. Because this is a preliminary margin, the Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final margin for this company.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which NV exceeds EP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (%)
Hylsa, S.A. de C.V.	14.93
Tuberia Nacional, S.A. de C.V.	31.34
All Others	14.93

The All Others rate is derived exclusive of all *de minimis* margins and margins based entirely on adverse facts available.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report is issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: September 29, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2524 Filed 10–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Stainless Steel Flanges from India: Notice of Initiation of Antidumping Duty New Shipper Review

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

ACTION: Notice of initiation of new shipper antidumping duty review.

SUMMARY: The Department of Commerce (the Department) has received requests for new shipper reviews of the antidumping duty order on certain forged stainless steel flanges from India issued on February 9, 1994 (59 FR 5994). In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.214(d) (2003), we are initiating an antidumping new shipper review of Hilton Forge (Hilton). We have also determined not to initiate new shipper reviews of Shree Ganesh Forgings, Ltd. (Shree Ganesh) and Paramount Forge (Paramount), exporters and producers that also requested new shipper reviews.

DATES: October 6, 2004.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Michael Heaney, or Robert James, AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2924, (202) 482–4475, or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received three timely requests, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d) of the Department's regulations, for new shipper reviews of the antidumping duty order on certain forged stainless steel flanges (flanges) from India. *See Amended Final Determination and Antidumping Duty Order; Certain Forged Stainless Steel Flanges from India,* 59 FR 5994 (February 9, 1994). *See* also the letters to the Secretary of Commerce dated August 31, 2004, requesting new shipper reviews on behalf of Hilton, Paramount, and Shree Ganesh, exporters/producers of flanges.

Pursuant to the Department's regulations at 19 CFR 351.214(b), Hilton certified in its August 31, 2004, submission that it did not export subject merchandise to the United States during

the period of the investigation (POI) (July 1, 1992, through December 31, 1992), and that it was not affiliated with any exporter or producer of the subject merchandise to the United States during the POI. Hilton also submitted documentation establishing the date on which it first shipped the subject merchandise for export to the United States, the volume shipped, and the date of its first sale to its unaffiliated customer in the United States.

Paramount certified in its August 31, 2004, submission that it did not export subject merchandise to the United States during the POI, and that it was not affiliated with any exporter or producer of the subject merchandise to the United States during the POI. It also submitted documentation establishing the volume of its first shipment to the United States. However, it did not submit documentation establishing either the date of its first shipment to the United States, the entry date of the first shipment, or the date of sale of the first shipment. Since this information is required under 351.214(b)(iv) of the Department's regulations, we find Paramount's request deficient, and we are not initiating a new shipper review of it.

Shree Ganesh certified in its August 31, 2004, submission that it did not export subject merchandise to the United States during the POI, and that it was not affiliated with any exporter or producer of the subject merchandise to the United States during the POI. However, it submitted no documentation establishing the date on which it first shipped the subject merchandise for export to the United States, the volume shipped, or the date of the first sale to an unaffiliated customer in the United States. Shree Ganesh did address these questions in its cover letter, but did not submit ''documentation establishing'' the answers to them as required by19 CFR 351.214(b)(iv). Furthermore, the results of a Customs data query indicated that Shree Ganesh's first shipment to the United States entered U.S. Customs territory in December 1997, and thus that its first shipment to the United States was not the one reported in its August 31, 2004, submission. For these reasons we find Shree Ganesh's request for a new shipper review deficient, and we are not initiating a new shipper review of it.

Initiation of Review

In accordance with section 751(a)(2)(B) of the Act and section 351.214(d) of the Department's regulations, we are initiating a new shipper review of the antidumping duty order on flanges from India manufactured and exported by Hilton. This review covers the period February 1, 2004, through July 31, 2004. We intend to issue the preliminary results of this review no later than 180 days after the date on which this review is initiated, and the final results within 90 days after the date on which we issue the preliminary results. *See* section 751(a)(2)(B)(iv) of the Act.

We will instruct the Customs Service to suspend liquidation of any unliquidated entries of the subject merchandise from Hilton and allow, at the option of the importer, the posting, until completion of the reviews, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by Hilton in accordance with 19 CFR 351.214(e). Because Hilton certified that it both produces and exports the subject merchandise, the sale of which is the basis for this new shipper review request, we will permit the bonding privilege only for those entries of subject merchandise for which Hilton is both the manufacturer and the exporter.

Interested parties may submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and this notice are in accordance with section 751(a) of the Act and section 351.214(d) of the Department's regulations.

Dated: September 30, 2004.

Gary Taverman,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. E4–2525 Filed 10–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States Travel and Tourism Promotion Advisory Board; Notice of Open Meeting

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of open meeting.

Dates: October 26, 2004.

Time: 10 a.m.–1 p.m.

Place: Disney's Grand Floridian Resort and Spa, Salon 6, Grand Floridian Convention Center, 4401 Floridian Way, Lake Buena Vista, Florida 32830–1000. (The Convention Center is adjacent to the hotel.)

SUMMARY: The United States Travel and Tourism Promotion Advisory Board (Board) will hold a Board meeting on October 26, 2004, at the Grand Floridian Convention Center (adjacent to Disney's Grand Floridian Resort and Spa).

The Board will discuss the updated design and pending development and implementation plans of an international marketing and advertising campaign, which seeks to encourage individuals from the United Kingdom to travel to the United States for the express purpose of engaging in tourism. The meeting will be open to the public. Time will be permitted for public comment. To sign up for public comment, please contact Julie Heizer by 5 p.m. e.d.t. Wednesday, October 20, 2004. She may be contacted at U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 7025, Washington, DC 20230; via fax at (202) 482-2887; or, via e-mail at *promotion@tinet.ita.doc.gov*.

Written comments concerning Board affairs are welcome any time before or after the meeting. Written comments should be directed to Julie Heizer. Minutes will be available within 90 days of this meeting.

The Board is mandated by Public Law 108–7, section 210. As directed by Public Law 108–7, section 210, the Secretary of Commerce shall design, develop and implement an international advertising and promotional campaign, which seeks to encourage individuals to travel to the United States. The Board shall recommend to the Secretary of Commerce the appropriate coordinated activities for funding. This campaign shall be a multi-media effort that seeks to leverage the Federal dollars with contributions of cash and in-kind products unique to the travel and tourism industry. The Board was chartered in August of 2003 and will expire on August 8, 2005.

For further information, phone Julie Heizer, Office of Travel and Tourism Industries (OTTI), International Trade Administration, U.S. Department of Commerce at (202) 482–0140. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OTTI.

Dated: September 30, 2004.

Julie Heizer,

Deputy Director for Industry Relations, Office of Travel and Tourism Industries.

[FR Doc. E4–2500 Filed 10–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 093004A]

International Whaling Commission; Intersessional Revised Management Scheme Working Group Meeting; Nominations

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

ACTION: Request for nominations.

SUMMARY: This notice is a call for nominees for one non-federal position to the U.S. Delegation to the November 2004 International Whaling Commission (IWC) intersessional Revised Management Scheme (RMS) Working Group meeting.

DATES: All nominations for the U.S. Delegation to the IWC intersessional RMS Working Group meeting must be received by October 22, 2004.

ADDRESSES: All nominations for the U.S. Delegation to the IWC intersessional RMS Working Group meeting should be addressed to Rolland Schmitten, U.S. Commissioner to the IWC, and sent via post to: Cheri McCarty, 13708, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Prospective Congressional advisors to the delegation should contact the Department of State directly.

FOR FURTHER INFORMATION CONTACT: Cheri McCarty, 301–713–2322, Ext. 114.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the Regulation of Whaling, 1946. The U.S. Commissioner has primary responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and by other agencies. The non-federal representative selected as a result of this nomination process is responsible for providing input and recommendations to the U.S. IWC Commissioner representing the positions of non-governmental organizations.

The intersessional RMS Working Group meeting will be held November 29–December 1, 2004, in Borgholm, Sweden.

Dated: October 1, 2004.

P. Michael Payne,

Acting Director, Office of Protected Resources,National Marine Fisheries Service.

[FR Doc. 04–22482 Filed 10–1–04; 3:29 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the 2004 Science and Technology Quality Review Panel. The purpose of the meeting is to allow the Air Force Scientific Advisory Board to assess the quality and long-term relevance of Air Force Research Laboratory Special Program research. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: 15–18 November 2004.

ADDRESSES: Wright-Patterson Air Force Base, OH.

FOR FURTHER INFORMATION CONTACT: Major Kyle Gresham, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm. 5D982, Washington, DC 20330–1180, (703) 697–4808.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–22443 Filed 10–5–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the 2004 Science and Technology Quality Review Panel. The purpose of the meeting is to allow the Air Force Scientific Advisory Board to assess the quality and long-term relevance of Air Force Research Laboratory Propulsion research. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: 18–22 October, 2004.

ADDRESSES: Wright-Patterson Air Force Base, OH.

FOR FURTHER INFORMATION CONTACT: Major Kyle Gresham, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4808.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–22452 Filed 10–5–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF ENERGY

[Docket No. EA–297]

Application To Transfer Electricity Export Authorization SESCO Enterprises LLC and SESCO Enterprises Canada, LTD

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: SESCO Enterprises, LLC (SESCO) and SESCO Enterprises Canada LTD (SESCO Canada) have jointly applied to the Department of Energy (DOE) for authority to transfer electricity export authorization No. Order EA–292 from SESCO to SESCO Canada.

DATES: Comments, protests or requests to intervene must be submitted on or before November 5, 2004.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Systems (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (fax (202) 287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) (202) 586–4708 or Michael Skinker (Program Attorney) (202) 586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On July 6, 2004, in Order No. EA–292, DOE authorized SESCO to export electric energy from the United States to Canada as a power marketer for a period of two years. Following issuance of that Order, a new entity, Sesco Canada was formed to conduct this business and, on September 7, 2004, SESCO and the new entity, SESCO Canada, jointly applied to DOE pursuant to 10 CFR 205.305 to

transfer the electricity export authorization from SESCO to SESCO Canada.

SESCO Canada is a corporation formed under Delaware law with its principal place of business located at 120 Wood Avenue South, Suite 511, Iselin, NJ 08830. SESCO Canada is qualified to do business in the State of Delaware and has an application pending to qualify it to do business in Canada. SESCO Canada does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area. SESCO Canada will operate as a marketer and broker of electric power at wholesale and arrange services in related areas such as fuel supplies and transmission services. SESCO Canada will purchase the power to be exported from electric utilities and Federal power marketing agencies.

SESCO Canada proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, Vermont Electric Power Company and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by SESCO Canada as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the SESCO Canada application to export electric energy to Canada should be clearly marked with Docket EA–297. Additional copies are to be filed directly with James Thoresen, Chief Operating Officer, SESCO Enterprises Canada Ltd, 120 Wood Avenue South, Suite 511, Iselin, NJ 08830 and Michael Schubiger, Chief Executive Officer, SESCO Enterprises, LLC, 120 Wood Avenue South, Suite 511, Iselin, NJ 08830.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.de.gov.* Upon reaching the Fossil Energy Home page, select ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC on September 30, 2004.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Fossil Energy.

[FR Doc. 04–22425 10–5–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat.770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, October 12, 2004, 8:30 a.m.–4:30 p.m.

ADDRESSES: Ramada Limited, 2100 Boundary Street, Beaufort, SC 29902.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Closure Project Office, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Tuesday, October 12, 2004

8:30 a.m. Approval of Minutes, Agency Updates

8:45 a.m. Public Comment Session (5 Minute Rule)

9 a.m. Chair and Facilitator Update

9:30 a.m. Administrative Committee Report/Bylaws Amendment Proposal

10 a.m. Waste Management Committee Report

11:30 a.m. Public Comment

12 Noon Lunch Break

1 p.m. Facility Disposition & Site Remediation Committee Report

1:30 p.m. Closure Business Unit Update

2:15 p.m. Plutonium Operations

3 p.m. Public Comments

4 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make the oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct business. Each individual wishing to make public comment will be provided equal time to present their comments. This notice is being published less than 15 days before the date of the meeting due to Hurricane Jeanne, the Board had to be cancel the meeting scheduled for September 27–28 and reschedule for October 12, 2004.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, PO Box A, Aiken, SC 29802, or by calling her at (803) 952–7886.

Issued at Washington, DC, on September 30, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–22500 Filed 10–5–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the ''Annual Solar Thermal Collector Manufacturers Survey,'' and the ''Annual Photovoltaic Module/Cell Manufacturers Survey'' to the Office of Management and Budget (OMB) for revision and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq*.

DATES: Comments must be filed by November 5, 2004. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSESES: Send comments to OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) is recommended. The mailing address is 726 Jackson Place, NW., Washington, DC 20503. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*grace.sutherland@eia.doe.gov*) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 287–1712.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–63A, ''Annual Solar Thermal Collector Manufacturers Survey,'' and EIA–63B, ''Annual Photovoltaic Module/Cell Manufacturers Survey.''
2. Energy Information Administration.
3. OMB Number 1905–0196.
4. Revision.
5. Mandatory.
6. EIA's Forms EIA–63A and EIA–63B collect data on the manufacture, shipment, and importation of solar thermal collectors and photovoltaic modules/cells. The data are used by the private sector, the renewable energy industry, the DOE, and other government agencies. Respondents are U. S. companies that manufactured, shipped, and/or imported solar thermal collectors and/or photovoltaic modules and cells.
7. Business or other for-profit.
8. 358 hours of burden.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13)(44 U.S.C. 3501 et seq).

Issued in Washington, DC, September 28, 2004.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 04–22423 Filed 10–5–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on proposed revisions and three-year extensions to the Forms EIA–1, ''Weekly Coal Monitoring Report—General Industries and Blast Furnaces'' (Standby); EIA–3, ''Quarterly Coal Consumption and Quality Report—Manufacturing Plants;'' EIA–4, ''Weekly Coal Monitoring Report—Coke Plants'' (Standby); EIA–5, ''Quarterly Coal Consumption and Quality Report—Coke Plants;'' EIA–6A, ''Coal Distribution Report;'' EIA–6Q (Schedule Q), ''Quarterly Coal Report'' (Standby); EIA–7A, ''Coal Production Report;'' and EIA–20, ''Weekly Telephone Survey of Coal Burning Utilities'' (Standby). The Standby forms are designed to be utilized under certain emergency conditions.

DATES: Comments must be filed by December 6, 2004. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to William Watson. To ensure receipt of the comments by the due date, submission by FAX (202–287–1934) or e-mail (*william.watson@eia.doe.gov*) is recommended. The mailing address is Coal, Nuclear, and Renewables Division, EI–52, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, William Watson may be contacted by telephone at 202–287–1971.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to William Watson at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq*.) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq*.) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

EIA conducts coal surveys to collect information on coal production, distribution, receipts, consumption, quality, stocks, and prices. This information is used to support public policy analyses of the coal industry and is published in various EIA publications, including the Annual Coal Report, the Annual Energy Review, the Monthly Energy Review, and the Quarterly Coal Report. Respondents to the coal surveys include coal producers, coal distributors, and coal consumers.

Please refer to the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

II. Current Actions

EIA will be requesting a three-year extension of approval for all its coal surveys with changes proposed to Forms EIA–3, EIA–5, EIA–6A, and EIA–7A. EIA will not propose any changes to Forms EIA–1, EIA–4, EIA–6Q, and EIA–20 (all standby forms). The proposed changes to Forms EIA–3, EIA–5, EIA–6A, and EIA–7A are described below:

Form EIA–3 (Quarterly Coal Consumption and Quality Report—Manufacturing Plants)

Starting in 2000, coal synfuel plants began to be a significant new user of coal. (A coal synfuel plant is a facility where freshly-mined coal or recovered waste coal is sprayed with binders and heated to produce synthetic fuel). In 2001 and subsequent years, EIA added coal synfuel plants to the list of respondents to which it sent Form EIA–3, ''Quarterly Coal Consumption and Quality Report—Manufacturing Plants.'' In the latest completed reporting year, 2003, coal received by coal synfuel plants reached more than 115 million tons annually, compared to about 60 million tons received annually at other manufacturing facilities. However, coal synfuel plants are not the final consumers of the coal. Coal synfuel is distributed or sold to final consumers such as electric generation plants, other manufacturing plants, coke plants, and exported.

To understand the final disposition of coal it is necessary to have data on the amount of coal synfuel distributed or sold by coal synfuel plants to each major end-use sector. Accordingly, EIA proposes to add a new schedule to the EIA–3 to collect data from coal synfuel plants on the quantity (short tons) of coal synfuel distributed or sold by type of end-use consumer (*e.g.*, electric generation, manufacturing plant, coke plant, export) and by destination State.

EIA would make the data on coal synfuel final disposition available to the public on EIA's website starting in 2005 quarter 1 as part of the Quarterly Coal Report. Currently, EIA is not collecting these data in any other survey and, therefore, is not providing these data in any EIA publication available to the public. The new data tables would complete the set of information needed to understand the overall disposition of U.S. coal.

EIA uses an Internet Data Collection system to collect data for the EIA–3 form. Currently, all coal synfuel plants submit their data on coal receipts and coal use (but not distribution) to the EIA through the Internet Data Collection system. The additional schedule would be made available only to coal synfuel plants through the Internet Data Collection system and would make it possible for coal synfuel plants to submit the additional proposed data with minimal effort.

EIA would extend and reorganize the instructions that accompany the EIA–3 form to assist coal synfuel respondents. EIA would prepare and provide a Visual Guide to the extended internet data collection form.

EIA proposes to make additional minor revisions to the EIA–3 instructions (existing section D) to list the various modes by which respondents can submit the data form, to include information on Internet Data Collection, Secure File Transfer, mail, E-mail, and facsimile. Transport mode options will be expanded to include two additional categories: (1) Transport by ship on the Great Lakes and (2) transport by tramway or conveyor. These choices will clarify transport mode so that more accurate records can be kept by EIA.

Form EIA–5 (Quarterly Coal Consumption and Quality Report—Coke Plants)

EIA proposes to make additional minor revisions to the EIA–5 instructions (existing section D) to list the various modes by which respondents can submit the data form, to include information on Internet Data Collection, Secure File Transfer, mail, E-mail, and facsimile. Transport mode options will be expanded to include two additional categories: (1) Transport by ship on the Great Lakes and (2) transport by tramway or conveyor. These choices will clarify transport mode so that more accurate records can be kept by EIA.

Form EIA–6A (Coal Distribution Report)

On its EIA–6A data form, EIA collects data on the amount of coal distributed by coal producers and distributors to various aggregate consumer types such as electric generators, manufacturing plants, coke plants, and other sectors. The EIA–6A instructions request that respondents include coal distributions to coal synfuel plants as part of ''Manufacturing.'' Currently, the use of coal at coal synfuel plants represents about twice the volume of coal used by other manufacturing plants (115 million tons vs. 60 million tons annually). In feedback to EIA, data users have noted the relatively large amount of coal used by coal synfuel plants. EIA has determined that better understanding of the overall disposition of coal would be improved if coal distributed to coal synfuel plants was not aggregated with coal distributed to other manufacturing plants. Accordingly, EIA proposes to add a new consumer type, Coal Synfuel plants, to the EIA–6A form and request that respondents use that consumer type rather than ''Manufacturing'' when reporting coal distributed to coal synfuel plants. The form instructions would be modified to include the new consumer type.

The EIA–6A data are published annually on the EIA website in table format. The published distribution tables would be modified to break out coal synfuel plants as a separate aggregate sector. Consequently, data users would be able to understand how much coal is distributed to coal synfuel plants, as distinct from the coal distributed to other manufacturing facilities.

Because coal synfuel plants receive relatively large amounts of coal and are few in number (55 coal synfuel plants compared to 475 coal-using manufacturing plants) EIA–6A producer and distributor respondents most likely

know when coal is being distributed or sold to coal synfuel plants. Consequently, EIA does not anticipate any change in respondent requirements to report data for the new coal synfuel plant consumer type.

EIA proposes to make additional minor revisions to the EIA–6A instructions (existing section III) to list the various modes by which respondents can submit the data form, to include information on Internet Data Collection, mail, and facsimile.

Form EIA–7A (Coal Production Report)

EIA proposes to simplify the instructions for entering datum in Section J. Facility Location.

EIA publishes data on open market sales (quantity and average sales price) that do not distinguish among various open market consumer classes. However, Section V of the current EIA–7A data form asks respondents to report open market sales to two classes of consumers: coal mining companies and coal dealers as one class and all other consumers as a second class. Because the data by individual class are not published (only aggregate data are published), EIA proposes to collapse the two classes of open market sales to a single open market sale category.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in Item II. The following guidelines are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for each of the coal surveys is shown below as an average hour(s) per response. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

—Form EIA–1, ''Weekly Coal Monitoring Report—General Industries and Blast Furnaces'' (Standby); 1.0 hour per response (no change from existing estimate of 1 hour)

—Form EIA–3, ''Quarterly Coal Consumption and Quality Report—Manufacturing Plants;''

1 hour per response, manufacturing plants (no change from existing estimate of 1 hour).

1.5 hours per response, coal synfuel plants (new schedule for respondent, existing estimate without new schedule is 1 hour).

—Form EIA–4, ''Weekly Coal Monitoring Report—Coke Plants'' (Standby); 1.0 hour per response (no change from existing estimate of 1 hour)

—Form EIA–5, ''Quarterly Coal Consumption and Quality Report—Coke Plants;'' 1.5 hours per response (no change from existing estimate of 1.5 hours)

—Form EIA–6A, ''Coal Distribution Report;'' 5.0 hours per response (no change from existing estimate of 5.0 hours)

—Form EIA–6Q, 'Quarterly Coal Report'' (Standby); 1 hour per response (no change from existing estimate of 1 hour)

—Form EIA–7A, ''Coal Production Report;'' 1 hour per response (no change from existing estimate of 1 hour)

—Form EIA–20, ''Weekly Telephone Survey of Coal Burning Utilities'' (Standby) 1 hour per response (no change from existing estimate of 1 hour)

Forms EIA–1, 4, 6Q, and 20 are Standby surveys. The above estimates reflect the anticipated burden per response in the event these surveys are implemented.

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

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

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, September 29, 2004.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 04–22424 Filed 10–5–04; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC04–555–001, FERC–555]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

September 29, 2004.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and reinstatement of this information collection requirement. Any interested person may file comments

directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of May 14, 2004 (69 FR 26561–26562) and has responded to their comments in its submission to OMB.

DATES: Comments on the collection of information are due by October 31, 2004.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *Pamela__L.__Beverly@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED-30, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC04–555–001.

Documents filed electronically via the Internet must be prepared in, MS Word, Portable Document Format, Word Perfect or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments are available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information*: FERC–555 ''Records Retention Requirements.''
2. *Sponsor:* Federal Energy Regulatory Commission.
3. Control No. 1902–0098.

The Commission is now requesting that OMB approve with a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions Sections 301, 304 and 309 of the Federal Power Act (FPA) (16 U.S.C. 825, 825c and 825h), Sections 8, 10, and 16 of the Natural Gas Act (NGA) (Pub. L. 75–688) (15 U.S.C. 717–717w) and Section 20 of the Interstate Commerce Act (ICA 49 U.S.C. 20). The regulations for preservation of records establish retention periods, necessary guidelines and requirements to sustain retention of applicable records for the regulated public utilities, natural gas and oil pipeline companies subject to FERC's jurisdiction. These records will be used by the regulated companies as the basis for their required rate and tariff filings and reports for the Commission. In addition, the records will be used by the Commission's audit staff during compliance reviews, by enforcement staff during investigations and for special analyses as deemed necessary by the Commission. The records retained by jurisdictional companies as directed by the Commission are the result of a mandatory requirement.

On January 27, 2000, FERC issued a final rule (Order No. 617) amending its records retention regulations for public utilities and licensees, natural gas and oil pipeline companies. These changes included revising the general instructions and shortening various records retention schedules. Order No. 617's objective was to reduce or eliminate burdensome and unnecessary regulatory requirements. It has been over three years since Order No. 617 took effect on January 1, 2001, and there has been sufficient time for jurisdictional companies to implement Order No. 617's provisions. Therefore in responding to this notice, the Commission is interested in knowing if the jurisdictional companies have obtained substantial reductions in the recordkeeping burden for maintaining their records under the revised retention periods. In addition, the Commission is interested in learning if and what savings were achieved by the jurisdictional companies by freeing up storage space formerly used for retaining records. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 parts 125, 225 and 356.

5. *Respondent Description:* The respondent universe currently comprises 535 companies (on average per year) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 1,285,070 total hours, 535 respondents (average per year), 1 response per respondent, and 2402 hours per respondent for recordkeeping (average).

7. *Estimated Cost Burden to Respondents:* 1,285,070 hours/2080 hours per years × $107,185 per year = $66,221,263 or $123,778 per respondent.

Statutory Authority: Sections 301, 304 and 309 of the Federal Power Act (FPA) (16 U.S.C. 825, 825c and 825h), Sections 8, 10, and 16 of the Natural Gas Act (NGA) (Pub. L. 75–688) (15 U.S.C. 717–717w) and Section 20 of the Interstate Commerce Act (ICA 49 U.S.C. 20).

Magalie R. Salas,

Secretary.

Docket No. IC04–555–001

[FR Doc. E4–2512 Filed 10–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–116]

ANR Pipeline Company; Notice of Negotiated Rate Filing

September 29, 2004.

Take notice that on September 22, 2004, ANR Pipeline Company (ANR) tendered for filing and approval seven amendments to existing negotiated rate service agreements between ANR and Wisconsin Gas Company.

ANR requests that the Commission accept and approve the subject negotiated rate agreement amendments to be effective November 1, 2004.

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. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2520 Filed 10–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–603–000]

CenterPoint Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 30, 2004.

Take notice that on September 21, 2004, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheets to be effective November 1, 2004:

Fourth Revised Sheet No. 17,
Fourth Revised Sheet No. 18,
Fourth Revised Sheet No. 19,
Fourth Revised Sheet No. 31,
Fourth Revised Sheet No. 32.

CEGT states that the purpose of this filing is to adjust CEGT's fuel percentages and Electric Power Costs (EPC) Tracker pursuant to Sections 27 and 28 of its General Terms and Conditions.

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. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2501 Filed 10–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–349–000]

Columbia Gas Transmission Corporation; Renotice of Application and Extension of Time

September 30, 2004.

On June 8, 2004, the Commission issued the following Notice of Application (Notice) in the above-docketed proceeding. The Notice was issued and served on all parties to the proceeding but inadvertently, the Notice was not published in the **Federal Register.** By the instant notice, the initial Notice is reissued and the time for filing interventions, comments, and protests is extended to and including October 12, 2004. The text of the initial Notice follows.

On June 3, 2004, Columbia Gas Transmission Corporation (Columbia), at 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed an application in the above referenced docket, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, as amended, to abandon its storage injection/withdrawal Well 8901, to construct new injection/withdrawal Well 12446 and appurtenances including 0.01 mile of 6-inch well line (SLW–12446), and extend SLW–9623 0.02 mile with 4-inch pipeline, all located in Ashland County, Ohio in Columbia's Pavonia Storage Field. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online at *FERCOnlineSupport@ferc.gov* or toll free, (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to counsel for Columbia, Fredric J. George, at (304) 357–2359, fax (304) 357–3206.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211)

and the Regulations under the NGA (18 CFR 157.10).

A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: October 12, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2508 Filed 10–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–411–000 and CP04–416–000]

Crown Landing LLC, Texas Eastern Transmission, LP; Notice of Applications

September 29, 2004.

Take notice that on September 16, 2004, Crown Landing LLC (Crown Landing), 501 WestLake Park Boulevard, Houston, Texas 77079, filed an application, in Docket No. CP04–411–000, seeking authorization pursuant to section 3 of the Natural Gas Act (NGA) and Part 153 of the Commission's regulations to site, construct and operate a liquefied natural gas (LNG) terminal in Logan Township, Gloucester County, New Jersey on the Delaware River. The LNG terminal will receive and unload LNG carriers from around the world, store the equivalent of 9.2 Bcf of natural gas and provide a baseload send-out capacity of 1.2 Bcfd. Crown Landing requests approval of its request by July 1, 2005. Any questions regarding this application should be directed to Lauren B. Segal, Vice President, Crown Landing LLC, 501 WestLake Park Blvd., Houston, Texas 77079 or phone (281)366–2259 or FAX (281)366–2753.

Also take notice that on September 17, 2004, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed an application, in Docket No. CP04–416–000, for a certificate of public convenience and necessity, pursuant to section 7(c) of the NGA and Part 157 of the Commission(s regulations, to construct, install, own, operate and maintain certain pipeline facilities, referred to as the Logan Lateral, in Delaware County, Pennsylvania and Gloucester County, New Jersey. The Logan Lateral will consist of 11 miles of 30-inch pipeline capable of transporting approximately 0.9 Bcfd of regasified LNG from Crown Landing's proposed LNG terminal, located in New Jersey, across the Delaware River to an interconnection with Texas Eastern's pipeline system in Pennsylvania. Texas Eastern also requests authorization to implement an incremental initial rate to provide firm transportation service on the Logan Lateral under its existing Rate Schedule MLS–1. The estimated cost of the Logan Lateral is approximately $77.3 million. Any questions regarding this application should be directed to Steven E. Tillman, General Manager, Regulatory Affairs, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642 or phone (713) 627–5113 or FAX (713) 627–5947.

These applications are on file with the Commission and open to public inspection. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or, for TTY, contact (202) 502–659.

On January 8, 2004, the Commission staff granted Crown Landing's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF04–2–000 to staff activities involving Crown Landing. Now, as of the filing of Crown Landing's application on September 16, 2004, the NEPA Pre-Filing Process for Crown Landing's project is closed. From this time forward, Crown Landing's proceeding will be conducted in Docket No. CP04–411–000.

On January 20, 2004, the Commission staff also granted Texas Eastern's request to utilize the NEPA Pre-Filing Process and assigned Docket No. PF04–5–000 to staff activities involving Texas Eastern. Now, as of the filing of Texas Eastern's application on September 17, 2004, the NEPA Pre-Filing Process for Texas Eastern's project is closed. From this time forward, Texas Eastern's proceeding will be conducted in Docket No. CP04–416–000.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons may also wish to comment further only on the environmental review of this project. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents issued by the Commission, and will be notified of meetings associated with the Commission's environmental review process. Those persons, organizations, and agencies who submitted comments during the NEPA Pre-Filing Processes in Docket Nos. PF04–2–000 and PF04–5–000 are already on the Commission staff's environmental mailing list for the proceeding in the above dockets and may file additional comments on or before the below listed comment date. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, environmental commenters are also not parties to the proceeding and will not receive copies of all documents filed by other parties or non-environmental documents issued by the Commission. They will not have the right to seek court review of any final order by Commission in this proceeding.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: October 20, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2521 Filed 10–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–060]

Dominion Transmission, Inc.; Notice of Negotiated Rate

September 29, 2004.

Take notice that, on September 22, 2004, Dominion Transmission, Inc. (DTI) submitted a compliance filing pursuant to the Commission's Order Approving Abandonment, Accepting Negotiated Rate Agreement, and Accepting Tariff Sheet, Subject to Condition, 108 FERC 61,106 (2004), at Docket No. RP96–383–059. Specifically, DTI tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet, to become effective the later of October 1, 2004:

Substitute Fourth Revised Sheet No. 1401.

Dominion Transmission, Inc. states that copies of the filing were served on parties on the official service list in the above captioned proceeding.

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. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2519 Filed 10–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

September 29, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2232–476.

c. *Date Filed:* September 14, 2004.

d. *Applicant:* Duke Power, a division of Duke Energy Corporation.

e. *Name of Project:* Catawba-Wateree Project.

f. *Location:* This project is located on the Catawba and Wateree Rivers, in nine counties in North Carolina (Burke, Alexander, McDowell, Iredell, Caldwell, Lincoln, Catawaba, Gaston, and Mecklenburg Counties) and five counties in South Carolina (York, Chester, Lancaster, Fairfield and Kershaw Counties). This project does not occupy any Tribal or Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative; Duke Energy Corporation; P.O. Box 1006; Charlotte, NC; 28201–1006; (704) 382–8576.

i. *FERC Contact:* Any questions on this notice should be addressed to Kate DeBragga at (202) 502–8961, or by e-mail: *Kate.DeBragga@ferc.gov.*

j. *Deadline for filing comments and or motions:* October 25, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2197–068) on any comments or motions

filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* Duke Power, licensee for the Catawba-Wateree Hydroelectric Project, has requested Commission approval to lease 0.480 acres of project lands for non-project use. Duke Power proposes to lease these lands to Sunset Point, LLC, for the purpose of constructing a commercial/residential marina. The marina facility will consist of one cluster dock with 14 boat docking locations, and will be constructed of high quality, heavy-duty 14 gauge aluminum and an encapsulated foam flotation system. The dock will be constructed offsite and floated into place. No dredging is proposed. The marina facility will provide access to Lake James for the residents of the Sunset Point development, located in McDowell County, North Carolina.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. 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.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2513 Filed 10–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES04–46–001]

El Paso Electric Company; Notice of Application

September 29, 2004.

Take notice that on September 24, 2004, El Paso Electric Company amended its application submitted pursuant to section 204 of the Federal Power Act seeking authorization to issue up to $150 million of long-term debt. The amendment contains additional information related to El Paso Electric Company's ongoing operations and financial condition.

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. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and any parties in this proceeding.

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 ''eFiling'' 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 6, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2511 Filed 10–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–606–000]

Missouri Interstate Gas, L.L.C.; Notice of Filing

September 29, 2004.

Take notice that on September 22, 2004, Missouri Interstate Gas, L.L.C. (Missouri Interstate) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Revised Tariff Sheet No. 52. The tariff sheet was filed to comply with the Commission's Order issued on July 7, 2004, in this docket.

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. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or

protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2517 Filed 10–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–607–000]

North Baja Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

September 29, 2004.

Take notice that on September 23, 2004, North Baja Pipeline, LLC (NBP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective October 25, 2004:

First Revised Sheet No. 100,
Second Revised Sheet No. 105,
First Revised Sheet No. 166,
Original Revised Sheet No. 202,
Sheet Nos. 203–229.

NBP states that these tariff sheets are being submitted to make certain minor conforming changes to its Tariff to implement the requirements of Order Nos. 2004, *et seq.*, and the Standards of Conduct pursuant to Part 358 of the Commission's regulations.

NBP further states that a copy of this filing has been served on NBP's jurisdictional customers and interested state regulatory agencies.

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. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2518 Filed 10–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–419–000]

Northern Natural Gas Company; Notice of Application

September 29, 2004.

Take notice that on September 22, 2004, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP04–419–000 an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations, for permission and approval to abandon a natural gas pipeline suspension bridge (and its appurtenant facilities) spanning the Missouri River in Dakota County, Nebraska, and Woodbury County, Iowa, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link, select ''Docket #'' and follow the instructions (call (202) 502–8222 or for TTY, (202) 502–8659).

Northern proposes to abandon by removal a 2,640-foot cable suspension bridge which supports 3,170 feet of the B-Line's 16-inch diameter pipeline spanning the Missouri River in Dakota and Woodbury Counties. Northern estimates that it will spend $550,000 of internally generated funds to abandon and remove the pipe, support cables, anchor structures, and concrete foundations that support the overall bridge structure. Northern states that the concrete foundations will be removed down to two feet below the existing grade.

Northern further states that it replaced the suspension bridge's B-Line pipeline segment with a 16-inch diameter pipeline via directional drilling under the Missouri River under Northern's blanket authority granted in Docket No. CP82–401–000 [1] and will be reported in Northern's Annual Report to be filed on or before May 1, 2005. Northern also states that no firm service would be lost to its existing customers since Northern replaced the existing B-Line on the suspension bridge via directional drilling.

Any questions regarding this application should be directed to Michael T. Loeffler, Director, Certificates and Reporting for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7103 or Donna Martens, Senior Regulatory Analyst, at (402) 398–7138.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list

[1] 20 FERC ¶ 62,410 (1982).

maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: October 18, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2510 Filed 10–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–138–000]

PJM Interconnection, L.L.C., American Electric Power Service Corporation; Notice of Initation of Investigation and Refund Effective Date

September 30, 2004.

On September 28, 2004, the Commission issued an order in the above-referenced proceeding initiating an investigation under section 206 of the Federal Power Act to examine the just and reasonableness of American Electric Power Service Corporation's hold harmless payments.

The Commission's September 28, 2004 Order established the refund effective date as 60 days from the issuance date of the Order.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2502 Filed 10–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–513–033]

Questar Pipeline Company; Notice of Negotiated Rates

September 29, 2004.

Take notice that on September 22, 2004 Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Thirty-Fourth Revised Sheet No. 7, with an effective date of September 22, 2004.

Questar states that the tariff filing is being filed to reflect the addition of two new negotiated-rate contracts with its customers. Questar states that its negotiated-rate contract provisions were authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, *et. al.* The Commission approved Questar's request to implement a negotiated rate option for Rate Schedules T–1, NNT, T–2, PKS, FSS and ISS shippers. Questar states that it submitted its negotiated-rate filing in accordance with the Commission's Policy Statement in Docket Nos. RM95–6–000 and RM96–7–000 issued January 31, 1996.

Questar states that a copy of this filing has been served upon all parties to this proceeding, Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

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. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2509 Filed 10–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2101–074—California]

Sacramento Municipal Utility District; Notice of Designation of Certain Commission Personnel as Non-Decisional

September 30, 2004.

Commission staff member Michael Henry (Office of Energy Projects; 503–552–2762; *mike.henry@ferc.gov*) is assigned to help resolve environmental and other issues associated with the development of a comprehensive settlement agreement for the South Fork American River Project. The parties involved in the settlement process wish to complete a comprehensive settlement agreement and file an offer of settlement before the license application is due in July 2005.

As non-decisional staff, Mr. Henry will not participate in an advisory capacity in the Commission's review of any offer of settlement or settlement agreement, or deliberations concerning the disposition of the relicense application once it is filed for the project.

Different Commission advisory staff will be assigned to review any offer of settlement or settlement agreement, and process the relicense application, including providing advice to the Commission with respect to the agreement and application. Non-decisional staff and advisory staff will be prohibited from communicating with one another concerning any filed settlement and relicense application for the project.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2504 Filed 10–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–602–000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

September 30, 2004.

Take notice that on September 20, 2004, TransColorado Gas Transmission Company (TransColorado) tendered for filing with the Federal Energy Regulatory Commission (Commission) certain tariff sheets to become part of its FERC Gas Tariff, First Revised Volume No. 1 (Tariff) to be effective November 1, 2004.

TransColorado states that the purpose of this filing is to (1) supplement Section 7 of the General Terms and Conditions (GT&C) of TransColorado's tariff to establish rollover rights and to expand the availability of the right of first refusal tariff provisions for shippers on the pipeline; and (2) add provisions to TransColorado's tariff so that delivery pressure may be mutually agreed upon between TransColorado and its shippers.

TransColorado states that a copy of this filing has been served upon on all of its customers and effected state commissions.

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. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2507 Filed 10–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–605–000]

Transcontinental Gas Pipe Line Corporation; Notice of Expedited Approval of a Limited Waiver of Tariff

September 29, 2004.

Take notice that on September 23, 2004, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a request for expedited approval of a waiver of the penalty provisions of Section 19.1(e) and 19.2(e) of the General Terms and Conditions of Transco's FERC Gas Tariff until such time as Transco has filed for and obtained approval of any revisions to Section 19. Transco requests that the Commission issue an order granting the requested waiver by October 10, 2004 to enable Transco to apply the waiver to the invoices for September 2004 business.

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. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2516 Filed 10–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–601–000]

Transwestern Pipeline Company; Notice of Tariff Filing

September 29, 2004.

Take notice that on September 20, 2004, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 (''Tariff''), to become effective November 1, 2004:

Second Revised Volume No. 1,
Sixteenth Revised Sheet No. 5B.02.

Transwestern's Stipulation and Agreement filed on May 2, 1995, in Docket No. RP95–271, *et al.,* as amended by Transwestern's Stipulation and Agreement filed on May 21, 1996, provided for annual adjustments to the Settlement Base Rates (SBRs) beginning November 1, 1998. Transwestern states that the purpose of the instant filing is to set forth the factors and calculations used in determining the adjustments to the SBRs and to revise the SBRs to be effective November 1, 2004.

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. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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Magalie R. Salas,

Secretary.

[FR Doc. E4–2515 Filed 10–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–1018–001, et al.]

American Electric Power Service Corporation, *et al.*; Electric Rate and Corporate Filings

September 21, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. American Electric Power Service Corporation

[Docket No. ER04–1018–001]

Take notice that on September 14, 2004, American Electric Power Service Corporation (AEPSC) on behalf of Ohio Power Company (OPC) and Columbus Southern Power Company (CSP) has submitted a compliance filing pursuant to the Commission's Letter Order issued September 10, 2004, in Docket No. ER04–1018–000.

AEPSC states that a copy of the filing was served upon the Parties and the state utility regulatory commission of Ohio. *Comment Date:* 5 p.m. eastern time on October 5, 2004.

2. New York State Electric & Gas Corporation

[Docket No. ER04–1061–001]

Take notice that on September 15, 2004, New York State Electric & Gas Corporation (NYSEG) submitted for filing a Substitute Original Service Agreement No. 335 under the New York Independent System Operator, Inc. FERC Electric Tariff Original Vol. No. 1 that sets forth the terms and conditions governing the interconnection between Windfarm Prattsburgh, LLC's (WFPB) generating facility in Steuben and Yates Counties, New York and NYSEG's transmission system.

NYSEG states that copies of the filing were served upon WFPB, the New York State Public Service Commission, and the New York Independent System Operator, Inc.

Comment Date: 5 p.m. eastern time on October 6, 2004.

3. New England Power Pool and ISO New England Inc.

[Docket No. ER04–1219–000]

Take notice that on September 14, 2004, the New England Power Pool (NEPOOL) Participants Committee and ISO New England Inc. (ISO-NE) jointly submitted a filing pursuant to section 205 of the Federal Power Act requesting acceptance of Amendment No. 5 (Amendment) to the Interim Independent System Operator Agreement (ISO Agreement) dated July 1, 1997, between ISO-NE and the NEPOOL Participants. NEPOOL Participants Committee and ISO state that the Amendment extends the term of the ISO Agreement to no later than April 1, 2005, in accordance with certain terms of the Settlement Agreement Resolving Specified Issues (the Settlement Agreement) filed September 14, 2004, by NEPOOL, ISO-NE and the New England transmission owners which are parties thereto in Docket Nos. RT04–2–004, ER04–116–004, and EL01–39–004. NEPOOL and ISO-NE request an effective date of November 1, 2004.

The NEPOOL Participants Committee and ISO-NE state that copies of these materials were sent to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment Date: 5 p.m. eastern time on October 5, 2004.

4. Caprock Wind LLC

[Docket No. ER04–1220–000]

Take notice that on September 14, 2004, Caprock Wind LLC (Caprock) submitted for filing with the Commission an application requesting that the Commission accept its Market-Based Tariff for filing grant it the authority to sell energy in wholesale transactions at negotiated, market-based rates. Caprock request an effective date of November 1, 2004.

Comment Date: 5 pm Eastern Time on October 5, 2004.

4. Mankato Energy Center, LLC

[Docket No. ER04–1221–000]

Take notice that on September 14, 2004, Mankato Energy Center, LLC (Makato) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Monkato states that it will be engaged in the development, construction, ownership, and operation of a nominal 730 megawatt gas-fired combined cycle electric generating facility to be located in Mankato, Blue Earth County, Minnesota. Applicant requests an effective date of February 1, 2006.

Comment Date: 5 p.m. eastern time on October 5, 2004.

6. DB Energy Trading LLC, a Delaware Limited Liability Company DB Energy Trading LLC, a Cayman Islands Limited Liability Company

[Docket No. ER04–1222–000]

Take notice that on September 14, 2004, DB Energy Trading LLC, a Delaware limited liability company (Applicant), tendered for filing its application for market-based rate authorization to sell energy and capacity at market-based rates, reassign transmission capacity and resell firm transmission rights and requesting certain waivers and blanket approvals. DB Energy Trading LLC, a Cayman Islands limited liability company (DB Energy (Cayman)), submitted, a Notice of Cancellation of DB Energy (Cayman's) Electric Rate Schedule FERC No. 1.

Comment Date: 5 p.m. eastern time on October 5, 2004.

7. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER04–1224–000]

Take notice that on September 15, 2004 Deseret Generation & Transmission Co-operative, Inc. (Deseret) tendered for filing an amendment to First Revised Service Agreement No. 6 under Deseret's FERC Electric Tariff, Original Volume 1. Deseret states that the amendment includes an Agreement for Large Industrial Incentive Rate between Deseret and one of its members, Mt. Wheeler Power, Inc. Deseret requests an effective date of September 1, 2004.

Deseret states that copies of this filing have been served upon Deseret's member cooperatives.

Comment Date: 5 p.m. eastern time on October 6, 2004.

8. NEGT Energy Trading—Power, L.P.

[Docket No. ER04–1225–000]

Take notice that on September 15, 2004, NEGT Energy Trading—Power, L.P. (Energy Trading) submitted a Notice of Cancellation of Rate Schedule FERC No. 1, originally accepted for filing and made effective December 13, 1995, in Docket No. ER95–1625–000, and redesignated as PG&E Energy Trading—Power, L.P., rate schedule and supplements, made effective January 1, 1998, in Docket No. ER98–1370–000.

Energy Trading states that the Notice of the proposed cancellation has not been served on any party because NEGT Energy Trading—Power, L.P. is not currently engaged in any sales of electric power or entered into any power or related contracts with any purchasers.

Comment Date: 5 p.m. eastern time on October 6, 2004.

9. PJM Interconnection, L.L.C.

[Docket No. ER04–1226–000]

Take notice that on September 15, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interconnection service agreement (ISA) among PJM, PPL Montour, L.L.C., and PPL Electric Utilities Corporation, and a notice of cancellation of an interconnection service agreement that has been superseded. PJM requests an effective date of August 16, 2004.

PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: 5 p.m. eastern time on October 6, 2004.

10. PJM Interconnection, L.L.C.

[Docket No. ER04–1227–000]

Take notice that on September 15, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interconnection service agreement (ISA) among PJM, PPL Holtwood, L.L.C., and PPL Electric Utilities Corporation, and a notice of cancellation of an interim interconnection service agreement that has been superseded. PJM requests an effective date of August 16, 2004.

PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: 5 p.m. eastern time on October 6, 2004.

11. California Independent System Operator Corporation

[Docket No. ER04–1228–000]

Take notice that, on September 15, 2004, the California Independent System Operator Corporation (ISO) submitted an informational filing as to the ISO's revised transmission Access Charge rates for the period of August 13, 2003, through December 31, 2003, to implement the settled rate for Pacific Gas and Electric Company TO6.

The ISO states that this filing has been served upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, the Participating Transmission Owners, and upon all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff. In addition, the ISO is posting the filing on the ISO home page.

Comment Date: 5 p.m. eastern time on October 6, 2004.

12. New York Independent System Operator, Inc.

[Docket No. ER04–1229–000]

Take notice that on September 15, 2004, the New York Independent System Operator, Inc. (NYISO) filed revisions to its Open-Access Transmission Tariff and Market Administration and Control Area Services to implement a new cost allocation methodology under Rate Schedule 1 of each tariff. NYISO requests an effective date of January 1, 2005.

NYISO states that it has electronically served a copy of this filing on the official representative of each of its customers, on each participant in its stakeholder committees, and on the New York State Public Service Commission, on the electric utility regulatory agencies of New Jersey and Pennsylvania.

Comment Date: 5 p.m. eastern time on October 6, 2004.

13. NorthWestern Energy

[Docket No. ER04–1231–000]

Take notice that on September 16, 2004, NorthWestern Corporation, doing business as NorthWestern Energy (NorthWestern) submitted a Generation Interconnection Agreement between NorthWestern Corporation and NorthWestern Energy, L.L.C.

Comment Date: 5 p.m. eastern time on October 7, 2004.

14. Pacific Gas and Electric Company

[Docket No. ER04–1233–000]

Take notice that on September 15, 2004, Pacific Gas and Electric Company (PG&E) submitted a conditional section 205 filing that included proposed amendments to the Scheduling Coordinator Services Tariff (SCS Tariff), FERC Electric Tariff First Revised Volume 9.

PG&E states that copies of this filing have been served upon the California Public Utilities Commission, all parties designated on the Official Service List compiled by the Federal Energy Regulatory Commission in Docket No. ER00–565–000 and the ISO.

Comment Date: 5 p.m. eastern time on October 6, 2004.

15. International Transmission Company

[Docket No. ER04–1234–000]

Take notice that, on September 16, 2004, as supplemented on September 20, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and International Transmission Company (International Transmission Company) submitted a filing with the Commission requesting changes to Attachment O of Midwest ISO's Open Access Transmission Tariff (OATT), applicable to rates for transmission service in the International Transmission pricing zone. Midwest ISO and International Transmission Company state that the changes are filed to further comply with *International Transmission Company,* 107 FERC ¶ 61,089 (2004), which required International Transmission to make accounting changes and to reflect certain of the changes in the OATT. Midwest ISO and International Transmission also state that its filing will also make the Attachment O tariff sheets consistent with Exhibits A and B that the Commission approved by order issued on July 2, 2003, in Docket No. ER03–343–001, *International Transmission Company,* 104 FERC ¶ 61,033 (2003), and by Commission Letter Order issued on July 14, 2004, in Docket No. ER03–343–005. Furthermore, the Midwest ISO and International Transmission Company, filed ministerial changes to Attachment O of Midwest ISO's OATT.

Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: 5 p.m. eastern time on October 7, 2004.

Standard Paragraph

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. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2496 Filed 10–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG04–87–000, et al.]

White Pine Electric Power, L.L.C., et al.; Electric Rate and Corporate Filings

September 28, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. White Pine Electric Power, L.L.C.

[Docket No. EG04–87–000]

Take Notice that on September 27, 2004, White Pine Electric Power, L.L.C. (White Pine) filed with the Commission an amendment to its July 27, 2004, as amended on August 31, 2004, application for determination of exempt wholesale generator status. In the September 27, 2004 filing, White Pine modifies its request concerning authorization to engage in the sale of purified water and compressed air. Comments on the September 27, 2004 filing are due on October 6, 2004.

White Pine's amendment filed on August 31, 2004 was noticed on September 20, 2004 with a comment date of October 12, 2004. By this notice, the date for submitting comments on White Pine's August 31, 2004 amendment is shortened to October 6, 2004.

Comment Date: 5 p.m. Eastern Time on October 6, 2004.

2. Fibrominn LLC

[Docket No. EG04–103–000]

Take notice that on September 24, 2004, Fibrominn LLC (Fibrominn) with a principal place of business at 301 Oxford Valley Road, Makefield Executive Quarters, Suite 704A, Yardley, PA 19067, filed with the Commission an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations in connection with Fibrominn's intended leasehold interest in a new 50 MW (nominal) biomass generating facility to be constructed in the City of Benson, Minnesota that is to be owned by PowerMinn 9090, LLC.

Comment Date: 5 p.m. Eastern Time on October 15, 2004.

3. Xcel Energy Services, Inc.

[Docket No. ER99–1610–006]

Take notice that on September 7, 2004, Xcel Energy Services, Inc. (Xcel Energy Inc.) (formerly New Century Services, Inc.) on behalf of

Southwestern Public Service Company (SPS) and Golden Spread Electric Cooperative, Inc., pursuant to the Commission's order issued August 5, 2004 Establishing Paper Hearing in the above caption docket, submitted a joint letter indicating that it no longer owns any marketing affiliates that would qualify to make purchases from SPS (or any sister operating companies within the Xcel Energy system). Xcel Energy also states that it has no current plans to establish a new marketing affiliate and that there is no present need to resolve the issue raised in the Remand Order in *Golden Spread Electric Cooperative, Inc.* v. *Federal Energy Regulatory Commission*, 319 F.3d 522 (D.C. Circuit 2003) (Remand Order).

Comment Date: 5 p.m. Eastern Time on October 7, 2004.

4. Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.

[Docket No. ER04–375–009]

Take notice that on September 24, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection, L.L.C. (PJM), amended their September 7, 2004 compliance filing in Docket No. ER04–375–000 to submit, at the Commission's request, the Joint Operating Agreement Between the Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C. (JOA), including the Congestion Management Process (CMP), in its entirety, and to include in the CMP graphics that were inadvertently omitted due to software errors.

PJM states that copies of this filing, including Original Sheet Nos. 225A, 239A, and 242A, and Substitute Original Sheet No. 238, but *excluding* the full JOA and CMP, were served upon all persons on the official service list compiled by Secretary in this proceeding, as well as all PJM members, and each state electric utility regulatory commission in the PJM regions. PJM will promptly post the complete revised volume of the JOA, including the CMP, on PJM's Web site (*http://www.pjm.com*) and will deliver a hard copy to any person upon request. PJM also states that it has requested waiver, to the extent required, of Rule 2010(a) to accommodate this request. Service upon the Midwest ISO members and other stakeholders also was requested to be waived; however, the filing is available on the Midwest ISO Internet site (*www.midwestiso.org*).

Comment Date: 5 p.m. Eastern Time on October 15, 2004.

5. PJM Interconnection, L.L.C.

[Docket Nos. ER04–653–004, ER04–742–002, and ER04–1077–001]

Take notice that on September 24, 2004, PJM Interconnection, L.L.C. (PJM), in compliance with the Commission's order issued September 17, 2004 in Docket No. ER04–1077–000, 108 FERC ¶ 61,246, order issued September 21, 2004 in Docket No. ER04–742–001, 108 FERC ¶ 61,269, and order issued September 22, 2004 in Docket No. ER04–653–002, 108 FERC ¶ 61,307, submitted for filing amendments to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. and the PJM Open Access Transmission Tariff to specify the rules for a temporary mitigation measure addressing customers in new PJM transmission zones that do not receive nominated financial transmission rights up to their pre-existing long-term firm transmission contract levels. PJM requests an effective date of May 1, 2004.

PJM states that copies of this filing have been served on all PJM members, the utility regulatory commissions in the PJM region, and all persons on the official service list compiled by the Secretary in this proceeding.

Comment Date: 5 p.m. Eastern Time on October 15, 2004.

6. NEGT Energy Trading—Power, L.P.

[Docket No. ER04–1225–001]

Take notice that on September 24, 2004, NEGT Energy Trading—Power, L.P. (Energy Trading) submitted an amendment to its September 15, 2004 filing of a Notice of Cancellation of its Rate Schedule FERC No. 1.

Comment Date: 5 p.m. Eastern Time on October 15, 2004.

7. Public Service Company of New Hampshire

[Docket No. ER04–1238–000]

Take notice that on September 24, 2004, Northeast Utilities Service Company (NUSCO), on behalf of its affiliate Public Service Company of New Hampshire (PSNH), filed the executed Distribution Interconnection and Operating Agreement (the Agreement) by and between PSNH and Fraser N.H., LLC (Fraser), Great Lakes Hydro America, LLC (GLHA) and White Mountain Energy, LLC (White Mountain and together with Fraser and GLHA, the Non-PSNH Parties). NUSCO states that under the Agreement, the Non-PSNH Parties' existing generating units are, and their proposed new generating unit will be, interconnected to existing 22 kV PSNH radial distribution lines that PSNH has been using to deliver retail electricity to Fraser and its predecessors for decades. NUSCO requests an effective date of September 24, 2004.

NUSCO states that a copy of this filing has been sent to the Non-PSNH Parties and they fully consent to and support this filing.

Comment Date: 5 p.m. Eastern Time on October 15, 2004.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–1239–000]

Take notice that on September 24, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Notice of Succession of certain Transmission Service Agreements and Network Integration Transmission Service and Operating Agreements entered into by and between Illinois Power Company and various transmission customers. The Midwest ISO requests an effective date of October 1, 2004.

Midwest ISO states that it has served a copy of this filing upon the affected customers. In addition, the Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. Midwest ISO also states that it will provide hard copies to any interested parties upon request.

Comment Date: 5 p.m. Eastern Time on October 15, 2004.

9. American Electric Power Service Corporation

[Docket No. ER04–1240–000]

Take notice that on September 24, 2004, the American Electric Power Service Corporation (AEPSC), tendered for filing a Network Integration Transmission Service Agreement for Indiana Municipal Power Agency, designated as Service Agreement No. 567 under the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6. AEPSC requests an effective date of September 1, 2004.

AEPSC states that a copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment Date: 5 p.m. Eastern Time on October 15, 2004.

10. PJM Interconnection, L.L.C.

[Docket No. ER04–1243–000]

Take notice that on September 24, 2004, PJM Interconnection, L.L.C. (PJM) submitted amendments to Schedule 2 of the PJM Open Access Transmission Tariff to incorporate the revenue requirements for Reactive Supply and Voltage Control From Generation Sources Service (Reactive Power) for Midwest Generation, LLC (MWGen), Duke Energy Lee, LLC (Duke Lee), Fairless Energy, LLC (Fairless Energy), PPL University Park, LLC (PPL–UP), Conectiv Bethlehem, LLC (CBLLC) and Calpine Energy Services, LP (CES), and to correct minor typographical errors.

PJM states that copies of this filing have been served on all PJM members, including MWGen, Duke Lee, Fairless Energy, CES, PPL–UP, and CBLLC, and each state electric utility regulatory commission in the PJM region.

Comment Date: 5 p.m. Eastern Time on October 15, 2004.

11. NorthPoint Energy Solutions Inc.

[Docket No. ER04–1244–000]

Take notice that on September 24, 2004, NorthPoint Energy Solutions Inc. tendered for filing a request for: (1) Approval of its FERC Rate Schedule No. 1 for the sale of electric energy and capacity at market-based rates, (2) approval of the waiver of certain Commission regulations, and (3) approval of certain waivers of the Commission's regulations. NorthPoint requests an effective date of December 1, 2004.

Comment Date: 5 p.m. Eastern Time on October 15, 2004.

12. Fibrominn LLC

[Docket No. ER04–1245–000]

Take notice that on September 24, 2004, Fibrominn LLC, (Fibrominn) tendered for filing a request for: (1) Approval of its Rate Schedule No. 1 authorizing it to engage in sales at market-based rates, (2) approval of certain waivers of the Commission regulations, and (3) approval of certain blanket authorizations in connection with a facility to be built in Benson, Minnesota.

Comment Date: 5 p.m. Eastern Time on October 15, 2004.

13. Midwest Generation, LLC

[Docket No. ER04–1246–000]

Take notice that on September 24, 2004 Midwest Generation, LLC (MWGen) tendered for filing a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 4, to be effective October 1, 2004.

MWGen states that copies of the filing were served upon Commonwealth Edison Company and PJM Interconnection, L.L.C.

Comment Date: 5 p.m. Eastern Time on October 15, 2004.

Standard Paragraph

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. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

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.

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Magalie R. Salas,

Secretary.

[FR Doc. E4–2497 Filed 10–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 289–013]

Louisville Gas and Electric Company; Notice of Site Visit

September 29, 2004.

On November 4, 2004, the Office of Energy Projects staff will participate in an on-site visit of the Ohio Falls Hydroelectric Project located on the Ohio River in Jefferson County, Kentucky. This project is located at the U.S. Army Corp of Engineer's McAlpine Locks and Dam Project. The site visit will begin at 9 a.m. (EST) and last approximately four hours. The site visit will begin at Louisville Gas and Electric's office located at 220 West Main Street, Louisville, Kentucky (corner of 3rd and Main Street). The purpose of the site visit is for Louisville Gas and Electric to show the project features and explain the proposal for modernizing and rehabilitating the hydroelectric facility. The proposal is included in the application for a new major license, filed on October 7, 2003.

All interested parties and individuals are welcome to attend the site visit. Due to public safety and security concerns all interested parties must contact Mr. Roger Hickman, Regulatory Affairs, Louisville Gas and Electric, 220 West Main Street, Louisville, Kentucky 40202, (502) 627–4031, e-mail *roger.hickman@lgeenergy.com.* by October 27, 2004, to arrange to attend. Please provide Mr. Hickman your name and the entity you represent.

Any questions concerning this notice should be directed to John Costello at (202) 502–6119, e-mail *john.costello@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E4–2514 Filed 10–5–04; 8:45am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 803—California]

Pacific Gas and Electric; Notice of Site Visit

September 30, 2004.

On October 27 and October 28, 2004, the Federal Energy Regulatory Commission (Commission) Staff and Pacific Gas and Electric Company, the applicant, will conduct an on-site visit of the DeSabla Project located on Butte Creek and the West Branch of the Feather River, Butte County, California. Under the Integrated Licensing Process (ILP), the Commission conducts its National Environmental Policy Act (NEPA) scoping meeting within 90 days of the filing of the applicant's Notice of Intent and Pre-Application Document. A site visit is typically held in conjunction with that scoping meeting. However, scoping for this project is currently

planned for November 17–18, 2004, and access to some project facilities may be limited by weather conditions. For this reason, the Commission will host the site visit earlier in the process. The Commission encourages all interested parties to participate in this site visit to ensure a productive scoping meeting in November 2004.

The site visit is open to the public and resource agencies. Car pooling is encouraged as much as possible but participants may be required to provide their own transportation to most sites. Roads in upper watershed locations are unpaved and may be in poor condition—4 wheel drive is recommended. Portions of the tour may require hiking steep trails in remote locations. Weather may be cold, and possibly wet in October. Please plan accordingly. Tour days may be long, please bring food and water. A tentative schedule is provided below.

Due to the logistics involved in traveling to some locations, there is the need to know the number of attendees in advance. All individuals planning to attend need to call or e-mail Susan O'Brien, FERC Team Leader, at (202) 502-8449 or *susan.obrien@ferc.gov,* no later than October 21, 2004. During the August 26 relicensing process planning meeting, several parties indicated that attendance on a weekday may not be possible and that a weekend visit to specific sites may be of interest. Parties interested in a weekend visit to specific sites should also contact Susan O'Brien.

Tentative schedule for site visit (times given are in Pacific daylight savings):

Wednesday, October 27, 2004—West Branch Feather River Watershed

7:45 a.m. Individuals arrive at PG&E's Camp 1 Office located on Humbug Road adjacent to DeSabla Forebay. This is approximately 2 miles north of Magalia and Magalia is approximately 3 miles north of Paradise. Camp 1 is approximately 45 minutes from Chico or Oroville. Please arrive on time.

8 a.m. *Leave* PG&E's Camp 1 Office.

10 a.m. Arrive at Snag Lake—10 minute stay.

11 a.m. Arrive at Butte House Meadows—10 minute stay.

12:30 p.m Arrive at Philbrook Reservoir—1 hour stay, including lunch break.

2:30 p.m. Arrive at Hendricks Head Dam—20 minute stay.

3:45 p.m. Arrive at Toadtown Powerhouse—30 minute stay.

4:45 p.m. Arrive back at Camp 1.

Thursday, October 28, 2004—Butte Creek Watershed

7:45 a.m. Individuals arrive at PG&E's Camp 1 Office. See previous day for directions.

8 a.m. *Leave* PG&E's Camp 1 Office.

9:30 a.m. Arrive at Butte Head Dam—30 minute stay (this location is remote with very poor, narrow roads, limited parking and will require a short but very steep hike).

11:30 a.m. Arrive at DeSabla Forebay/ Camp 1—1 hour stay, including lunch break.

12:30 p.m. *Leave* Camp 1 for DeSabla Powerhouse and LCDD—Private vehicle are not recommended on this portion of the tour.

2:30 p.m. Arrive back at Camp 1 and leave for Centerville Powerhouse.

4 p.m. Arrive at Centerville Powerhouse—45 minute stay.

4:45 p.m. Tour ends at Centerville Powerhouse.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2505 Filed 10–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2030–036]

Portland General Electric and the Confederated Tribes of the Warm Springs Reservation of Oregon; Notice of Technical Conference

September 30, 2004.

Take notice that a technical conference will be held to discuss the Settlement Agreement and proposed draft license articles filed on July 30, 2004, by Portland General Electric and The Confederated Tribes of the Warm Springs Reservation of Oregon for the Pelton Round Butte Hydroelectric Project.

This conference will be held on Tuesday, October 19, 2004, beginning at 11 a.m. (EDT) at the Federal Energy Regulatory Commission, Hearing Room 6, 888 First Street, NE., Washington, DC 20426. Participation by video teleconference will be available at the 3 World Trade Center, Room 01A, 121 SW. Salmon Street, Portland, Oregon 97204.

All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate. There will be no transcript of the conference. Please contact Nick Jayjack at (202) 502–6073 or *Nicholas.Jayjack@ferc.gov* by October 15, 2004, to RSVP. Please indicate whether you will participate in-person or by video teleconference. If you have any questions related to participation by video teleconference, please contact Marty May of Portland General Electric at 503–464–7578.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2503 Filed 10–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PL04–17–000 and AD04–11–000]

State of the Natural Gas Industry Conference; Staff Report on Natural Gas Storage; Notice of Public Conference

September 30, 2004.

The Federal Energy Regulatory Commission (FERC) will hold a conference on October 21, 2004, to engage industry members and the public in a dialogue about policy issues facing the natural gas industry today and the Commission's regulation of the industry for the future. In each of the prior two years, the Commission held wide-ranging discussions concerning its regulatory goals for the natural gas industry (Docket Nos. PL02–9–000 and PL03–6–000). This year's conference on the state of the natural gas industry will focus on underground storage and other factors that differentiate regional natural gas deliverability and market needs. The conference will have panels and an open forum that will give all interested individuals an opportunity to raise issues.

I. Scope of Inquiry

A. Responses to Report

The Commission seeks comments on certain findings in the FERC Staff Report, *Current State of and Issues Concerning Underground Natural Gas Storage,* released concurrently with this notice. These findings are:

- The market's various methods for the valuation of storage are a challenge in matching storage's value with the cost of new storage development.
- Storage may be the best way of managing gas commodity price volatility, so the long-term adequacy of storage investment depends on how much price volatility customers consider ''acceptable.''
- Storage projects in certain geographic areas often fail the Commission's market-based rates tests.

Thus, creative policy, certificate and ratemaking approaches may encourage storage development. Examples of these approaches are:

—Re-examining current cost-based pricing flexibility.

—Re-examining criteria for storage market-based rates.

—Re-examining certificate review and service policies.

B. Investment in Storage and Pipeline Infrastructure

How do existing Commission policies impact the development of new storage or pipeline infrastructure? The Commission would like to hear a discussion from entities that have recently developed new storage or pipeline projects. The Commission is also interested in hearing from parties that have recently canceled or postponed the development of new storage or pipeline infrastructure. The discussions should focus on how the decisions to develop these projects were impacted by existing Commission policies.

C. Need for Uncommitted Reserve Storage and Pipeline Capacity

Would a program for creating more uncommitted reserve storage and pipeline capacity be useful? In the next several years, the natural gas industry could experience increased capacity constraints and service interruptions or outages associated with facility inspection compliance activities required by the Department of Transportation. Also, recent experience with colder than normal weather has shown that certain regions' pipeline infrastructure is very near maximum capacity during such times. Other regions may approach their pipeline infrastructure's maximum capacity during peak electric generation seasons.

What actions, if any, should the Commission take to create more uncommitted reserve storage and pipeline capacity? Further, if uncommitted reserve storage and pipeline capacity is needed, what level of ''reserve margin'' might be appropriate? What options could be used to recover the costs of such capacity reserve margins? Should certain costs of uncommitted reserve storage and pipeline capacity be given presumptive rolled-in rate treatment in pipeline rate cases, or should cost tracking mechanisms for these types of costs be developed?

D. Changing Roles of Industry Segments and Commodity Price Volatility

As the natural gas industry matures and experiences more service unbundling down to end use levels, the various service provider roles will continue to change/evolve. One trend that seems to be emerging is a preference to purchase gas supplies at hubs in market areas, and a corresponding desire to shed upstream capacity commitments. This market evolution may have service implications depending on who holds upstream capacity contracts, and may lead to additional service balancing issues for supply aggregators and end users alike and increased commodity price volatility. Many local distribution companies (LDCs) are still redefining their role in the industry—will they continue their supply aggregation functions or will they become local ''pipes'' companies? When marketers were on the rise in many states, LDCs wanted to shed upstream capacity and supply aggregation roles in favor of having marketers handling these roles. Also, we believe that electric generators may be reluctant to commit to long-term capacity obligations, preferring to rely on downstream gas markets. In general, increased reliance on downstream markets as a substitute for capacity commitments may tend to increase seasonal commodity price volatility.

The Commission is interested in hearing views on how much seasonal commodity price volatility the industry and consumers can tolerate? Are customers and the industry, in general, willing to contract for the additional storage and pipeline capacity that may be necessary to mitigate commodity price volatility? Would we be better served with more storage and pipeline capacity as insurance against commodity price volatility?

II. Open Forum

In addition to addressing the above mentioned issues, the Commission also seeks input from industry representatives and interested individuals regarding other issues they believe are ripe for Commission consideration in shaping its future natural gas industry regulatory policies.

III. Participation

The conference will be held on October 21, 2004 at the Commission's headquarters, 888 First Street, NE., in Washington, DC beginning at 9 a.m. (EST) in the Commission's Meeting Room. The public is invited to attend. Anyone interested in being considered as a speaker to present their views at the conference should contact Richard Foley at (202) 502–8955 or at *Richard.Foley@ferc.gov* by October 12, 2004. Requests to speak should include information concerning the issue or issues the participant would like to speak on. Time constraints may not allow all requests to speak to be fulfilled. Persons requesting to speak on the same topic, with the same views, may be asked to consolidate their remarks through a single representative. We will issue further details on the conference, including the agenda and a list of participants, as plans evolve. Interested parties are urged to watch for further notices providing more information on the conference. You may register online at *http://www.ferc.gov/docs-filing/esubscriptions.asp* to be notified via e-mail of new issuances and filings related to these dockets.

The conference will be transcribed. Those interested in acquiring the transcript should contact Ace Reporters at (202) 347–3700 or (800) 336–6646. Transcripts will be placed in the public record ten days after the Commission receives the transcripts. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live or over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on ''FERC.''

Magalie R. Salas,

Secretary.

[FR Doc. E4–2506 Filed 10–5–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7824–5]

Request for Applications for Essential Use Exemptions to the Production and Import Phaseout of Ozone Depleting Substances Under the Montreal Protocol for the Years 2006 and 2007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Through this action, the Environmental Protection Agency (EPA) is requesting applications for essential use allowances for calendar years 2006 and 2007. Essential use allowances provide exemptions to the production and import phaseout of ozone-depleting substances and must be authorized by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. The U.S. Government will use

the applications received in response to this notice as the basis for its nomination of essential use allowances at the Seventeenth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (the Protocol), to be held in 2005.

DATES: Applications for essential use exemptions must be submitted to EPA no later than November 5, 2004 in order for the U.S. Government to complete its review and to submit nominations to the United Nations Environment Programme and the Protocol Parties in a timely manner.

ADDRESSES: Send two copies of application materials to: Scott Monroe, Stratospheric Protection Division (6205J), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. (For applications sent via courier service, use the following direct mailing address: 1310 L Street, NW., Washington, DC 20005.) *Confidentiality:* Application materials that are confidential should be submitted under separate cover and be clearly identified as ''trade secret,'' ''proprietary,'' or ''company confidential.'' Information covered by a claim of business confidentiality will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR part 2, subpart B, and will be disclosed only to the extent and by means of the procedures, set forth in that subpart. Please note that data will be presented in aggregate form by the United States as part of the nomination to the Parties. If no claim of confidentiality accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice to the company (40 CFR 2.203).

FOR FURTHER INFORMATION CONTACT: Scott Monroe at the above address, or by telephone at (202) 343–9712, by fax at (202) 343–2363, or by e-mail at *monroe.scott@epa.gov*. General information may be obtained from EPA's stratospheric protection Web site at *http://www.epa.gov/ozone*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background on the Essential Use Nomination Process
II. Information Required for Essential Use Applications for Production or Importation of Class I Substances in 2006 and 2007

I. Background—The Essential Use Nomination Process

As described in previous **Federal Register** (FR) documents,[1] the Parties to the Protocol agreed during the Fourth Meeting in Copenhagen on November 23–25, 1992, to accelerate the phaseout schedules for Class I ozone-depleting substances. Specifically, the Parties agreed that non-Article 5 Parties (that is, developed countries) would phase out the production and consumption of halons by January 1, 1994, and the production and consumption of other class I substances (under 40 CFR part 82, subpart A), except methyl bromide, by January 1, 1996. The Parties also reached decisions and adopted resolutions on a variety of other matters, including the criteria to be used for allowing ''essential use'' exemptions from the phaseout of production and importation of controlled substances. Decision IV/25 of the Fourth Meeting of the Parties details the specific criteria and review process for granting essential use exemptions.

Decision IV/25, paragraph 1(a), states that ''* * * a use of a controlled substance should qualify as ''essential'' only if: (i) It is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and (ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health.'' In addition, the Parties agreed ''that production and consumption, if any, of a controlled substance, for essential uses should be permitted only if: (i) All economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and (ii) the controlled substance is not available in sufficient quantity and quality from the existing stocks of banked or recycled controlled substances * * *.'' Decision XII/2 taken at the twelfth meeting of the Parties states that any CFC metered dose inhaler (MDI) product approved after December 31, 2000, is nonessential unless the product meets the criteria in Decision IV/25, paragraph 1(a).

The first step in obtaining essential use allowances is for the user to consider whether the use of the controlled substance meets the criteria of Decision IV/25. If the essential use request is for an MDI product, that product must also meet the criteria of Decision XII/2. The user should then send a completed application in order to notify EPA of the candidate use and provide information for U.S. Government agencies and the Protocol Parties to evaluate that use according to the criteria under the Protocol.

Upon receipt of the essential use exemption application, EPA reviews the information provided and works with other interested Federal agencies to determine whether it meets the essential use criteria and warrants being nominated by the United States for an exemption. In the case of multiple exemption requests for a single use, such as for MDIs, EPA aggregates exemption requests received from individual entities into a single U.S. request. An important part of the EPA review of requests for CFCs for MDIs is to determine that the aggregate request for a particular future year adequately reflects the total market need for CFC MDIs and expected availability of CFC substitutes by that point in time. If the sum of individual requests does not account for such factors, the U.S. Government may adjust the aggregate request to better reflect true market needs.

Nominations submitted by the United States and other Parties are forwarded from the United Nations Ozone Secretariat to the Montreal Protocol's Technical and Economic Assessment Panel (TEAP) and its Technical Options Committees (TOCs), which review the submissions and make recommendations to the Protocol Parties for essential use exemptions. Those recommendations are then considered by the Parties at their annual meeting for final decision. If the Parties declare a specified use of a controlled substance as essential, and issue the necessary exemption from the production and consumption phaseout, EPA may propose regulatory changes to reflect the decisions by the Parties, but only to the extent such action is consistent with the Clean Air Act (CAA or Act).

Applicants should be aware that essential use exemptions granted to the United States under the Protocol in recent years have been limited to chlorofluorocarbons (CFCs) for metered dose inhalers (MDIs) to treat asthma and chronic obstructive pulmonary disease, and methyl chloroform for use in manufacturing solid rocket motors. As of January 1, 2005, methyl chloroform will no longer be eligible for essential use allowances under section 604(d)(1) of the Act. EPA is consulting with the Department of Defense to identify mission-critical uses for which methyl

[1] 58 *FR* 29410, May 20, 1993; 58 *FR* 52544, October 18, 1994; 60 *FR* 54349, October 23, 1995; 61 *FR* 51110, 0 30, 1996, 62 *FR* 51655, October 2, 1997; 63 *FR* 42629, August 10, 1998; 64 *FR* 50083, September 15, 1999; 65 *FR* 65377, November 1, 2000; and 200166 *FR* 56102, November 6, 2001.

chloroform or other ozone-depleting substances may be needed in the future.

The timing of the process described above is such that in any given year the Parties review nominations for essential use exemptions from the production and consumption phaseout intended for the following year and subsequent years. This means that, if nominated, applications submitted in response to today's notice for an exemption in 2006 and 2007 will be considered by the Parties in 2005 for final action.

The quantities of controlled ODSs that are requested in response to this notice, if approved by the Parties to the Montreal Protocol in 2005, will then be allocated as essential use allowances (EUAs) to the specific U.S. companies through notice and comment rulemaking, to the extent that such allocations are consistent with the Act. EUAs for the year 2006 will be allocated to U.S. companies at the end of 2005, and EUAs for the year 2007 will be allocated at the end of 2006.

II. Information Required for Essential Use Applications for Production or Importation of Class I Substances in 2006 and 2007

Through this action, EPA requests applications for essential use exemptions for all class I substances, except methyl bromide, for calendar years 2006 and 2007. (EPA requests and considers applications for critical use exemptions for methyl bromide through a separate process.) This notice is the last opportunity to submit new or revised applications for 2006. This notice is also the first opportunity to submit requests for 2007. Companies will have an opportunity to submit new, supplemental, or amended applications for 2007 next year. All requests for exemptions submitted to EPA must present information as prescribed in the current version of the TEAP ''Handbook on Essential Use Nominations'' (or ''handbook''), which was published in June 2001. The handbook is available electronically on the Web at *http://www.teap.org*, or at *http://www.epa.gov/ozone*.

In brief, the TEAP Handbook states that applicants must present information on:

- Role of use in society;
- Alternatives to use;
- Steps to minimize use;
- Steps to minimize emissions;
- Recycling and stockpiling;
- Quantity of controlled substances requested; and
- Approval date and indications (for MDIs).

First, in order to obtain complete information from essential use applicants for CFC MDIs, EPA requires that any person who requests CFCs for multiple companies make clear the amount of CFCs requested for each member company. Second, all essential use applications for CFCs must provide a breakdown of the quantity of CFCs necessary for each MDI product to be produced. This detailed breakdown of EUAs will allow EPA and the Food and Drug Administration to make informed decisions on the amount of CFC to be nominated by the U.S. Government for the years 2006 and 2007. Third, all new drug application (NDA) holders for CFC MDI products produced in the United States must submit a complete application for essential use allowances either on their own or in conjunction with their contract filler. In the case where a contract filler produces a portion of an NDA holder's CFC MDIs, the contract filler and the NDA holder must determine the total amount of CFCs necessary to produce the NDA holder's entire product line of CFC MDIs. The NDA holder must provide an estimate of how the CFCs would be split between the contract filler and the NDA holder in the allocation year. This estimate will be used only as a basis for determining the nomination amount, and may be adjusted prior to allocation of EUAs. Since the U.S. Government cannot forward incomplete or inadequate nominations to the Ozone Secretariat, it is important for applicants to provide all information requested in the Handbook, including the information specified in the Supplemental Research and Development form (page 45).

The accounting framework matrix in the handbook entitled ''Table IV: Reporting Accounting Framework for Essential Uses Other Than Laboratory and Analytical'' requests data for the year 2004 on the amount of ODS exempted for an essential use, the amount acquired by production, the amount acquired by import, the amount on hand at the start of the year, the amount available for use in 2004, the amount used for the essential use, the quantity contained in exported products, the amount destroyed, and the amount on hand at the end of 2004. Because all data necessary for applicants to complete Table IV will not be available until after January 1, 2005, companies should not include this chart with their EUA applications in response to this notice. Instead, companies should provide the required data as specified in 40 CFR 82.13(u)(2). EPA must compile companies' responses to complete the U.S. CFC Accounting Framework for submission to the Parties to the Montreal Protocol by the end of January.

EPA anticipates that the Parties' review of MDI essential use requests will focus extensively on the United States' progress in phasing out CFC MDIs, including efforts by pharmaceutical companies to research, develop, and market non-CFC products. Accordingly, applicants are strongly advised to present detailed information on this subject. Applicants should submit their exemption requests to EPA as noted in the **ADDRESSES** section above.

Dated: September 28, 2004.

Jeffrey R. Holmstead,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 04–22487 Filed 10–5–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–7824–6]

California State Motor Vehicle Pollution Control Standards; Notice of Within-the-Scope Determinations for Amendments to California's Heavy-Duty Vehicle and Engine Standards for 1995 Urban Bus and 1998 NO_X Regulations

AGENCY: Environmental Protection Agency.

ACTION: Notice Regarding Within-the-Scope Determinations.

SUMMARY: The California Air Resources Board (CARB) requested that EPA confirm CARB's finding that amendments to its heavy-duty diesel powered vehicles and engines regulations, including its 1998 NO_X standards, are within-the-scope of a prior waiver of Federal preemption issued under section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b). In a separate request CARB sought EPA confirmation that CARB's finding that amendments to its heavy-duty diesel powered vehicle and engine regulations, including its 1995 urban bus standards, are within-the-scope of a prior waiver of Federal preemption. EPA in this notice has made the requested confirmation for the amendments in CARB's requests.

ADDRESSES: The Agency's Decision Document, containing an explanation of the Assistant Administrator's decision, as well as all documents relied upon in making that decision, including those submitted to EPA by CARB, are contained in the public docket. The official public docket is the collection of materials that is available for public

viewing. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1743. The reference numbers for these dockets are A–2000–45 and A–2002–16. The location of the Docket Center is the Environmental Protection Agency, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Copies of the Decision Document for this determination can also be obtained by contacting David Dickinson as noted below, or can be accessed on the EPA's Office of Transportation and Air Quality Web site, also noted below.

FOR FURTHER INFORMATION CONTACT:

David Dickinson, Attorney-Advisor, Certification and Compliance Division, (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202) 343–9256, fax: (202) 343–2804, e-mail: *Dickinson.David@EPA.GOV*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Electronic Copies of Documents

Electronic copies of this Notice and the accompanying Decision Document are available via the Internet on the Office of Transportation and Air Quality (OTAQ) Web site (*http://www.epa.gov/OTAQ*). Users can find these documents by accessing the OTAQ Home Page and looking at the path entitled ''Chronological List of All OTAQ Regulations.'' This service is free of charge, except for any cost you already incur for Internet connectivity. The official **Federal Register** version of the Notice is made available on the day of publication on the primary Web site (*http://www.epa.gov/docs/fedrgstr/EPA-AIR/*).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc. may occur.

II. 1998 NO_X Regulations

I have determined that amendments to the CARB's heavy-duty diesel powered vehicles and engines regulation are within-the-scope of a prior waivers issued under section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b), granted by EPA to CARB.[1] The amendments to the regulations, outlined in CARB's request letter[2], and fully described in CARB's submissions, provide for: (1) A mandatory 4.0 g/bhp-hr NO_X standard for heavy-duty engines and vehicles for the 1998 and subsequent model years which parallels EPA's adoption of this standard; (2) optional, lower NO_X emission standards beginning with the 1995 model year; (3) changing the ''useful life'' definition for heavy-duty engines and vehicles under Title 13, California Code of Regulations, section 2112, by extending the period of ''useful life'' from eight to ten years while maintaining the applicable, alternative mileage provisions that range from 110,000 to 290,000 miles (whichever occurs first); and (4) implementing new requirements for the California Motor Vehicle Emission Control Label Specifications in order to identify those engines which are certified to the optional, lower emission standards.

In a February 27, 1997, letter to EPA, CARB notified EPA of the above-described amendments to its heavy-duty vehicle and engine regulations and asked EPA to confirm that these amendments are within-the-scope of previous waivers. EPA can make such a confirmation if certain conditions are present. Specifically, if California acts to amend a previously waived standard or accompanying enforcement procedure, the amendments may be considered within-the-scope of a previously granted waiver provided that it does not undermine California's determination that its standards in the aggregate are as protective of public health and welfare as applicable Federal standards, does not affect the consistency with section 202(a) of the Act, and raises no new issues affecting EPA's previous authorization determination.[3]

In its request letter, CARB stated that the amendments will not cause the California standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. Regarding consistency with section 202(a), CARB stated that the amendments do not raise any concerns of inadequate leadtime or technological feasibility or impose any inconsistent certification requirements (compared to the Federal requirements). Finally, CARB stated that the amendments raise no new issues affecting the prior EPA authorization determinations.

EPA received no comments in opposition to CARB's findings and thus there is nothing in the record to support a denial of CARB's request. In addition, EPA's analysis confirms CARB's finding that the criteria for these amendments meeting a within-the-scope designation have been met. Thus, EPA finds that these amendments are within-the-scope of previous authorizations. A full explanation of EPA's decision is contained in a Decision Document which may be obtained from EPA as noted above.

III. CARB's 1995 Urban Bus Standards

I have determined that amendments to the CARB's heavy-duty diesel powered vehicles and engines regulation are within-the-scope of prior waivers issued under section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b), granted by EPA to CARB.[4] The amendments to the regulations, outlined in CARB's request letter[5], and fully described in CARB's submissions, provide for: (1) An alignment of California's particulate matter (PM) standards with Federal standards for such engines in the 1994 and 1995 model years and with the Federal PM standards starting in the 1996 model year; (2) a NO_X standard starting in the 1996 model year for urban buses; (3) an adoption of the Federal urban bus definition; (4) an exemption from the 4.0 g/bhp-hr NO_X standard for up to 10 percent of urban bus sales for model years 1996 and 1997; (5) an allowance to use California diesel fuel for certifying 1996 and 1997 model year urban buses and in 1998 and thereafter the applicable Federal test fuel; (6) an optional, lower NO_X emission standard beginning with the 1994 model year; (7) changing the useful life definition for 1994 and later urban buses; and (8) new requirements for Label Specifications

In a December 26, 1995 letter to EPA, CARB notified EPA of the above-described amendments to its heavy-duty vehicle and engine regulations and asked EPA to confirm that these amendments are within the scope of previous waivers.

In its request letter, CARB stated that the amendments will not cause the California standards, in the aggregate, to

[1] CARB generally aligned the California heavy-duty engine emission standards with the comparable Federal standards and procedures. EPA granted waivers for the aligned gasoline engine standards (53 FR 7022 (March 4, 1988)) and diesel engine standards (53 FR 7021 (March 4, 1988) and 52 FR 20777 (June 3, 1987)).

[2] Docket entry A–2000–45, II–B–1, letter to EPA, from CARB, dated February 27, 1997.

[3] Decision Document accompanying scope of waiver determination in 51 FR 12391 (April 10, 1986).

[4] CARB generally aligned the California heavy-duty engine and vehicle emission standards with the comparable Federal standards and procedures. EPA granted waivers for the aligned gasoline engine standards (53 FR 7022 (March 4, 1988) and diesel engine standards (53 FR 7021 (March 4, 1988) and 52 FR 20777 (June 3, 1987)).

[5] Docket entry A–2002–16, II-A–1, letter to EPA, from CARB, dated December 26, 1995.

be less protective of public health and welfare than the applicable Federal standards. Regarding consistency with section 202(a), CARB stated that the amendments do not raise any concerns of inadequate leadtime or technological feasibility or impose any inconsistent certification requirements (compared to the Federal requirements). Finally, CARB stated that the amendments raise no new issues affecting the prior EPA authorization determinations.

EPA received no comments in opposition to CARB's findings and thus there is nothing in the record to support a denial of CARB's request. In addition, EPA's analysis confirms CARB's finding that the criteria for these amendments meeting a within-the-scope designation have been met. Thus, EPA finds that these amendments are within-the-scope of previous authorizations. A full explanation of EPA's decision is contained in a Decision Document which may be obtained from EPA as noted above.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce heavy-duty diesel powered engines and vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by December 6, 2004. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

EPA's determination that these California regulations are within-the-scope of prior authorizations by EPA does not constitute a significant regulatory action under the terms of Executive Order 12866 and this action is therefore not subject to Office of Management and Budget review.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

Finally, the Administrator has delegated the authority to make determinations regarding authorizations under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: September 28, 2004.

Jeffrey R. Holmstead,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 04–22488 Filed 10–5–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0330; FRL–7682–7]

The Association of American Pesticide Control Officials/State FIFRA Issues Research and Evaluation Group; Working Committee on Water Quality and Pesticide Disposal; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Water Quality and Pesticide Disposal (WC/WQ&PD) will hold a 2–day meeting, beginning on October 25, 2004, and ending October 26, 2004. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, October 25, 2004, from 8:30 a.m. to 5 p.m., and on Tuesday, October 26, 2004, from 8:30 a.m. to noon.

ADDRESSES: The meeting will be held at the Doubletree Hotel, 300 Army Navy Drive, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Georgia A. McDuffie, Field and External Affairs Division, (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address:*mcduffie.georgia@epa.gov* or

Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1249; telephone number: (802) 472–6956; fax number: (802) 472–6957; e-mail address:*aapco@plainfield.bypass.com*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in SFIREG information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. All interested parties are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0330. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available

docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Tentative Agenda

1. New procedures for processing committee issues.
2. Implementation plans for registration review standard operating procedures.
3. Confidential business information issues.
4. Status of pesticide management plan and revised water quality management plan.
5. EPA cross-program ground water task force.
6. Potential water quality impacts of mosquito control.
7. Endangered species.
8. Pesticides regulatory education program.
9. United States Geological Survey/EPA interagency agreement grant contract.
10. Label statements for environmental mitigation.
11. Format for streamlined state reports.
12. Office of Pesticide Program & Office of Enforcement and Compliance Assurance updates.
13. State reports.
14. Chemigation backflow prevention.
15. Pesticide label disposal.
16. Pesticide label storage.
17. Proposed containers/containment rule.
18. Update on cleansweep pilot project.

List of Subjects

Environmental protection.

Dated: September 28, 2004.

William R. Diamond,

Director, Fead and External Affairs Division.

[FR Doc. 04–22489 Filed 10–5–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7824–8]

Rapid Processing of Turner Designs Model 10–AU–005 Internally Logged Fluorescence Data

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of a final document.

SUMMARY: This notice announces the availability of a final report titled, Rapid Processing of Turner Designs Model 10–AU–005 Internally Logged Fluorescence Data (EPA/600/R–04/053, August 2004), which was prepared by the U.S. Environmental Protection Agency's (EPA) National Center for Environmental Assessment (NCEA) of the Office of Research and Development (ORD).

ADDRESSES: The document will be made available electronically through the NCEA Web site (*http://www.epa.gov/ncea*). A limited number of copies of the printed and CD–ROM version of the document will be available from the EPA's National Service Center for Environmental Publications (NSCEP), PO Box 42419, Cincinnati, OH 45242; telephone: 1–800–490–9198 or 513–489–8190; facsimile: 513–489–8695. Please provide your name, your mailing address, the title and the EPA number of the requested publication.

FOR FURTHER INFORMATION CONTACT: The Technical Information Staff, National Center for Environmental Assessment/Washington Office (8623D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: 202–564–3261; fax: 202–565–0050; e-mail: *nceadc.comment@epa.gov.*

SUPPLEMENTARY INFORMATION: The U.S. EPA has used field fluorometers to measure dye fluorescence when such dyes are injected into ground water to trace groundwater flow. Typically, the data output from these off the shelf fluorometers are not optimized for field use or subsequential analysis. EPA has developed a methodology to enhance the usability of fluorometer data and is sharing that information with the user community.

This document and the related computer program, FLOWTHRU, provide a method for rewriting data internally logged by a fluorometer used by EPA (Turner Designs Model 10–AU–005 Field Fluorometer), thus optimizing the utility of the instrument's stored data. Application of the methodology provides the information necessary for rapid examination of tracer test results and preparation of data sets for numerical analysis. The new computer program bypasses block headers, reads the downloaded data, identifies the time-concentration units used, and relates the data to injection time. All preinjection time-concentration data are accorded background data status and are written to a background file with average temperature values included. All time values recorded after injection time are rewritten into decimal time using time units chosen by user. Additional features include options for processing selected percentages, averaged time values, and a smoothing routine that may be applied to the time-concentration data. FLOWTHRU also allows users to view the data converted to decimal time directly on the computer monitor without program interruption or to go directly to a data plotting routine. Data plotting is rapid and clear with a smooth line connecting each data point, and each data plot may be saved as a file in a common format.

Dated: September 27, 2004.

Peter Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 04–22486 Filed 10–5–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission, Comments Requested

September 23, 2004.

Summary: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. 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 Paperwork Reduction Act (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; and (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.

Dates: Written Paperwork Reduction (PRA) comments should be submitted on or before December 6, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

Addresses: Direct all Paperwork Reduction Act (PRA) comments to

Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

For Further Information Contact: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

Supplementary Information:

OMB Control Number: 3060–0715.

Title: Telecommunications Carriers' Use of Customer Proprietary Network Information (CPNI) and Other Customer Information, CC Docket No. 96–115.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit institutions.

Number of Respondents: 4,832.

Estimated Time per Response: 136 hours.

Frequency of Response: On occasion, biennial, one-time and annual reporting requirements; recordkeeping and third party disclosure requirements.

Total Annual Burden: 659,808 hours.

Total Annual Cost: $229,520.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: The Memorandum Opinion and Order on Reconsideration was released in response to reconsideration requests for the Commission's Subscriber List Information Order, which implemented section 222(e) of the Act. Section 222(e) requires carriers to provide their subscriber list information (*i.e.*, the names, addresses, phone numbers, and, where applicable, yellow pages advertising classifications) of their telephone exchange services subscribers to requesting directory publishers on a timely and unbundled basis and under reasonable and nondiscriminatory rates, terms, and conditions.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–22493 Filed 10–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 28, 2004.

Summary: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. 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 Paperwork Reduction Act 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; and (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.

Dates: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 6, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

Addresses: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov*.

For Further Information Contact: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

Supplementary Information:

OMB Control Number: 3060–0171.

Title: Section 73.1125, Station Main Studio Location.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 72.

Estimated Time per Response: 0.5–2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 135 hours.

Total Annual Cost: $87,780.00.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On March 14, 2002, the Commission released an *Order,* Establishment of the Media Bureau and Other Organizational Changes, DA No. 02–577, the Commission amended 47 CFR 73.1125(d) to reflect the reorganization of the existing Cable Services and Mass Media Bureaus into a new Media Bureau. Section 73.1125(d) requires licensees to receive written authority to locate a main studio outside the locations specified in paragraph (a) or (c) of this rule section for the first time must be obtained from the Audio Division, Media Bureau for AM and FM stations, or the Video Division for TV and Class A television stations before the studio may be moved to that location. Where the main studio is already authorized at a location outside those specified in paragraph (a) or (c) of this rule section, and the licensee or permittee desires to specify a new location also located outside those locations, written authority must also be received from the Commission prior to the relocation of the main studio. Authority for these changes may be requested by filing a letter with an explanation of the proposed changes with the appropriate division. Licensees or permittees should also be aware that the filing of such a letter request does not imply approval of the relocation request, because each request is addressed on a case-by-case basis. Commercial AM, FM, TV or Class A TV licensees or permittees must pay a fee when filing a request letter under 47 CFR 1.1104.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–22494 Filed 10–5–04; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; WC Docket No. 04–313; CC Docket No. 01–338; DA 04–164]

Federal-State Joint Board on Universal Service; Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: This document seeks comment on an ''Emergency Request for a Limited Modification of Interim Protective Order'' submitted by the Association for Local Telecommunications Services (ALTS). ALTS seeks modification of the interim protective order governing the use of

confidential line count information for the sole purpose of reviewing the possible correlation between access line density and impairment for unbundled dedicated interoffice transport for purposes of the Commission's *Triennial Review Remand Notice of Proposed Rulemaking*.

DATES: Comments are due on or before September 17, 2004.

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

FOR FURTHER INFORMATION CONTACT: Marcus Maher, Attorney, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1580, or at *Marcus.Maher@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's public notice in CC Docket No. 96–45; WC Docket No. 04–313; CC Docket No. 01–338; DA 04–2957, released September 10, 2004. The complete text of this public notice is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov*.

Synopsis of the Public Notice

1. On September 8, 2004, ALTS filed an Emergency Request For a Limited Modification of the interim protective order governing the use of confidential line count information in the non-rural universal service support proceeding. ALTS seeks access to this information for the sole purpose of reviewing the possible correlation between access line density and impairment for unbundled dedicated interoffice transport for purposes of the Commission's *Triennial Review Remand Notice of Proposed Rulemaking,* 69 FR 55129, September 13, 2004. We invite comment on the ALTS petition.

2. This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. See 47 CFR 1.1200, 1.1206. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. See 47 CFR 1.1206(b). Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

3. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on ALTS's request on or before September 17, 2004. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Suite TW–A325, Washington, DC 20554. One (1) courtesy copy must be delivered to Janice M. Myles at the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, 445 12th Street, SW., Suite 5–C140, Washington, DC 20554, or via e-mail, *janice.myles@fcc.gov*, and one (1) copy must be sent to Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via e-mail *http://www.bcpiweb.com*.

4. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

5. Parties that choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

6. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. This facility is the only location where hand-delivered or messenger-delivered paper filings for the Commission's Secretary will be accepted. 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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

7. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via e-mail *http://www.bcpiweb.com*.

Federal Communications Commission.

Jeffery Carlisle,

Chief, Wireline Competition Bureau.

[FR Doc. 04–22496 Filed 10–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via e-mail at *tradeanalysis@fmc.gov.* Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010051–034.

Title: Mediterranean Space Charter Agreement.

Parties: Evergreen Marine Corp. (Taiwan) Ltd,; Farrell Lines, Inc.; Italia di Navigazione, LLC; Lykes Lines Limited, LLC; A.P. Moller-Maersk A/S; Mediterranean Shipping Company, S.A.; P&O Nedlloyd Limited; P&O Nedlloyd B.V.; Hapag-Lloyd Container Linie GmbH; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment revises Zim's corporate name.

Agreement No.: 011290–033.

Title: International Vessel Operators Hazardous Material Association Agreement.

Parties: Aliança Navegacao e Logistica Ltda.; APL Co. PTE Ltd.; Atlantic Container Line AB; Australia-New Zealand Direct Line; Bermuda Container Line; Canada Maritime Agencies Ltd.; China Shipping Container Lines Co., Ltd.; CMA CGM, S.A.; Compania Latino Americana de Navegacion SA; Contship Containerlines; Crowley Maritime Corporation; Evergreen Marine Corp. (Taiwan) Ltd.; Hamburg-Südamerikanische Dampfschifffahrts-gesellschaft KG; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Linie GmbH; Horizon Lines, LLC; Hyundai Merchant Marine Co., Ltd.; Independent Container Line Ltd.; Italia di Navigazione, LLC; Kawasaki Kisen Kaisha Ltd.; Lykes Lines Limited, LLC; Marine Transport Lines, Inc.; Maruba SCA; Mitsui O.S.K. Lines, Ltd.; A.P. Moller-Maersk A/S; National Shipping Co. of Saudi Arabia; Nippon Yusen Kaisha Line; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; Safmarine Container Lines; Seaboard Marine Ltd.; Senator Lines GmbH; TMM Lines Limited; Tropical Shipping & Construction Co., Ltd.; United Arab Shipping Co. S.A.G.; Yang Ming Marine Transport Corp.; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esquire; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment changes Zim's name and deletes Mediterranean Shipping Co. S.A. as a party to the agreement.

Agreement No.: 011346–013.

Title: Israel Trade Conference Agreement.

Parties: Farrell Lines, Inc.; P&O Nedlloyd Limited; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment revises Zim's corporate name.

Agreement No.: 011353–032.

Title: The Credit Agreement.

Parties: A.P. Moller-Maersk A/S; Seaboard Marine of Florida, Inc.; Seaboard Marine Ltd.; King Ocean Services Limited; King Ocean Services de Venezuela; Dole Ocean Cargo Express; APL Co. PTE Ltd.; Evergreen Marine Corporation (Taiwan) Ltd.; Caribbean General Maritime, Ltd.; and Crowley Liner Services, Inc.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment updates Maersk's corporate name.

Agreement No.: 011405–017.

Title: Ocean Carrier Working Group Agreement

Parties: Latin America Agreement; Israel Trade Conference; Trans-Atlantic Conference Agreement; Transpacific Stabilization Agreement; Middle East Indian Subcontinent Discussion Agreement; United States Australasia Discussion Agreement; United States/South Europe Conference; Westbound Transpacific Stabilization Agreement; A.P. Moller-Maersk A/S; Contship Containerlines; Evergreen Marine Corporation (Taiwan) Ltd.; King Ocean Service de Venezuela, S.A.; Star Shipping A/S; Tropical Shipping & Construction Company, Limited; Wallenius Wilhelmsen Lines AS; Zim Integrated Shipping Services, Ltd.; and Hapag-Lloyd Container Linie GmbH.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment corrects the names of certain individual parties and updates the membership of various agreement parties.

Agreement No.: 011547–017.

Title: Eastern Mediterranean Discussion Agreement.

Parties: Farrell Lines, Inc.; COSCO Container Lines Co. Ltd.; China Shipping Container Lines Co., Ltd.; A.P. Moller-Maersk A/S; Mediterranean Shipping Company, S.A.; P&O Nedlloyd Limited; Hapag-Lloyd Container Linie GmbH; Turkon Container Transportation & Shipping, Inc.; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment revises Zim's corporate name.

Agreement No.: 011587–010.

Title: United States South Europe Conference.

Parties: A.P. Moller-Maersk A/S; P&O Nedlloyd Limited; and Hapag-Lloyd Container Linie GmbH.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment updates Maersk's corporate name.

Agreement No.: 011654–010.

Title: Middle East Indian Subcontinent Discussion Agreement.

Parties: The National Shipping Company of Saudi Arabia; A.P. Moller-Maersk A/S; United Arab Shipping Company (S.A.G.); CMA CGM S.A.; P&O Nedlloyd Limited; American President Lines; and Contship Container lines, a division of CP Ships (UK) Limited.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment updates Maersk's corporate name.

Agreement No.: 011689–007.

Title: Zim/CSCL Space Charter Agreement.

Parties: Zim Integrated Shipping Services, Ltd. and China Shipping Container Line Co., Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment revises Zim's corporate name.

Agreement No.: 011742–003.

Title: P&O Nedlloyd-Farrell/Hapag-Lloyd/Zim Mediterranean Space Charter Agreement.

Parties: Farrell Lines, Inc.; P&O Nedlloyd Limited; P&O Nedlloyd B.V.; Hapag-Lloyd Container Linie GmbH; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment revises Zim's corporate name.

Agreement No.: 011786–004.

Title: Zim/Great Western Agreement.

Parties: Zim Integrated Shipping Services, Ltd. and Great Western Steamship Company.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment revises Zim's corporate name.

Agreement No.: 011821–001.

Title: MSC/CMA CGM Space Charter Agreement.

Parties: CMA CGM, S.A. and Mediterranean Shipping Company, S.A.

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP; 61 Broadway, Suite 3000; New York, NY 10006–2802.

Synopsis: The amendment revises the parties' space allocations under the agreement. The parties request expedited review.

Agreement No.: 011874–001.
Title: K-Line/Zim Space Charter Agreement.
Parties: Zim Integrated Shipping Services, Ltd. and Kawasaki Kisen Kaisha, Ltd.
Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.
Synopsis: The amendment revises Zim's corporate name.

Agreement No.: 011875–001.
Title: Zim/Hapag-Lloyd USEC Slot Charter Agreement.
Parties: Zim Integrated Shipping Services, Ltd. and Hapag-Lloyd Container Linie GmbH.
Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.
Synopsis: The amendment revises Zim's corporate name.

Agreement No.: 011881–001.
Title: Zim/USL Space Charter Agreement.
Parties: Zim Integrated Shipping Services, Ltd. and U.S. Lines Limited.
Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.
Synopsis: The amendment revises Zim's corporate name.

Agreement No.: 201161.
Title: AMPT/Maher Cooperative Working Agreement.
Parties: APM Terminals North America, Inc.; Maher Terminals, Inc.; and Millennium Marine Rail LLC.
Filing Party: Wayne R. Rohde, Esquire; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, D.C. 20036.
Synopsis: The proposed agreement authorizes APMT and Maher to create a limited liability company, Millennium, that will act as a marine terminal operator operating an on-dock rail transfer facility in Elizabeth, New Jersey. The parties request expedited review.

Agreement No.: 201162.
Title: NYSA-ILA Assessment Agreement.
Parties: New York Shipping Association, Inc. and the International Longshoremen's Association, AFL-CIO for the Port of New York and New Jersey.
Filing Party: Richard P. Lerner, Esq.; Lambos & Junge; 29 Broadway—9th floor; New York, NY 10006.
Synopsis: The subject agreement replaces and supersedes the current NYSA-ILA Assessment Agreement. It provides for increased assessment rates for various categories of cargo.

Dated: October 1, 2004.

By Order of the Federal Maritime Commission.

Karen V. Gregory,
Assistant Secretary.

[FR Doc. 04–22517 Filed 10–5–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License no.	Name/address	Date reissued
003772NF	A.T.I., U.S.A., Inc., 1201 Corbin Street, Elizabeth, NJ 07201	September 6, 2004.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.

[FR Doc. 04–22518 Filed 10–5–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 003966N.
Name: Amerasa Rapid Transit USA Inc.
Address: 2490–M Arnold Industrial Way, Concord, CA 94520.
Date Revoked: September 21, 2004.
Reason: Failed to maintain a valid bond.

License Number: 000479F.
Name: Barian Shipping Company Inc.
Address: 910 Railroad Avenue, Woodmere, NY 11598.
Date Revoked: September 9, 2004.
Reason: Failed to maintain a valid bond.

License Number: 004548NF.
Name: Boss Shipping, Inc.
Address: 1890 NW 82nd Avenue, Suite 101, Miami, FL 33126.
Date Revoked: September 3, 2004.
Reason: Failed to maintain valid bonds.

License Number: 002860F.
Name: Calabresi International, Inc.
Address: 203 Carondelet Street, Suite 829, New Orleans, LA 70130.
Date Revoked: September 29, 2004.
Reason: Failed to maintain a valid bond.

License Number: 003077F.
Name: Dan San Diego dba SAS International.
Address: 200 62nd Street, Brooklyn, NY 11220.
Date Revoked: July 9, 2004.
Reason: Failed to maintain a valid bond.

License Number: 009867N.
Name: Harro Schumacher dba Schumacher Cargo Lines.
Address: 15501 Texaco Avenue, Paramount, CA 90723.
Date Revoked: September 22, 2004.
Reason: Failed to maintain a valid bond.

License Number: 012964N.
Name: Mon Dela Vega Singh dba Mon Cargo Services, International.
Address: 130 Doolittle Drive, Units 21 & 22, San Leandro, CA 94577.
Date Revoked: September 14, 2004.
Reason: Failed to maintain a valid bond.

License Number: 004598NF.
Name: Precision Worldwide Transport, Inc.
Address: 6581 Mars Road, Cranberry Township, PA 16066.
Date Revoked: September 19, 2004.
Reason: Failed to maintain valid bonds.

License Number: 004395N.
Name: Superior Link International Inc.
Address: 380 S. Lemon Avenue, Suite B1–G, Walnut, CA 91789.
Date Revoked: September 27, 2004.
Reason: Failed to maintain a valid bond.

License Number: 002648F.
Name: Traveria's Cargo, Inc.
Address: 1621 SW., 15th Street, Miami, FL 33145.
Date Revoked: September 24, 2004.
Reason: Failed to maintain a valid bond.

License Number: 013778N.
Name: Triton Shipping Co., Inc.
Address: 8081 NW., 87th Street, Miami, FL 33166.
Date Revoked: September 24, 2004.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.

[FR Doc. 04–22519 Filed 10–5–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel- Operating Common Carrier Ocean Transportation Intermediary Applicants:

AS–AV Uluslararasi Nakliyat Ve Ticaret Limited Sirketi, Mehmet Akif Caddesi 1. Sok. No: 23 Sirinevler, Istanbul, 34180, Turkey. Officers: Mehmet Yavuz Kankavi, Director of Overseas Opera. (Qualifying Individual), Melek Karabacak, President.

Newport Logistics, Inc., 171 Erick Street, Unit Y1, Crystal Lake, IL 60014. Officer: Michael Chung, President (Qualifying Individual).

Waterline Pakistan (PVT) Ltd., Ground Floor, 4–A, Kehkashan Town Houses, Block 5, Clifton, Karachi–75600—Pakistan. Officers: Capt. Ghulam Mustafa, Partner, Capt. Asaf Hayat, Officer (Qualifying Individuals).

Non-Vessel- Operating Common Carrier Ocean Freight Forwarder Transportation Intermediary Applicants:

Jauser Cargo Corporation, 5589 NW., 72nd Avenue, Miami, FL 33166. Officers: Gabriel Terra, Director (Qualifying Individual), Jorge Sere Ferber, President.

Fun N' Stuff International USA, Inc., dba Air Ocean Land Transport Logistics Inc., 13169 Alta Vista Way, Sylmar, CA 91342. Officers: Nash D. Asandas, President (Qualifying Individual), Carmencita Hernandez-Asandas, CFO.

Global Shipping Services, LLC, 200 Route 22 East, Hillside, NJ 07205. Officer: Morten Olesen, President (Qualifying Individual).

Asiapac Forwarding & Supply Chain Management dba Baobao Shipping, 4210 Solar Circle, Union City, CA 94587, Hidayat I. Shaikh, Sole Proprietor.

VIN Worldwide Transport, LLC dba Vinship Lines, Woodbridge Plaza, 485 Route 1, Building B, Suite 310—3rd Floor, Iselin, NJ 08830. Officer: Martin Joakim Aranha, President (Qualifying Individual).

SW Logistics Inc., 1330 Broadway, Suite 1052, Oakland, CA 94612. Officer: Sung Wook Lee, President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant:

Commonwealth Travel & Shipping, 9560 Skillman Road, Suite 100, Dallas, TX 75243. Officer: Victor K. Oyeujo, Sr., Manager (Qualifying Individual).

Dated: October 1, 2004.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 04–22520 Filed 10–5–04; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Delegation of Authority

Notice is hereby given that I have delegated to the Administrator, Health Resources and Services Administration (HRSA), the authority to execute functions pertaining to the Healthy Communities Access Program (HCAP) and ''HCAP Demonstration Projects,'' section 340, including 340(j) of Title III, Part D of the Public Health Service Act, as amended. This authority may be redelegated.

This delegation shall be exercised under the Department's existing delegation and policy on regulations.

I have ratified any actions taken by the HRSA Administrator or other HRSA officials that involve the exercise of this authority prior to the effective date of this delegation.

This delegation was effective on the date of signature.

Dated: September 29, 2004.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

[FR Doc. 04–22453 Filed 10–5–04; 8:45 am]

BILLING CODE 4165–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–04–02OA]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

CDC HIV Prevention Capacity-Building Assistance (CBA) Information Collection, Reporting and Monitoring Forms—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Background

CDC is requesting a 3-year clearance for information collection forms to monitor the HIV prevention activities of CBA provider grantees funded by CDC from 2004 to 2009. These forms will be used to collect information that assists in monitoring CBA services and activities. CDC is responsible for monitoring and evaluating HIV prevention activities conducted under these cooperative agreements. This requires that CDC have current information regarding the progress of CBA activities and services supported through these cooperative agreements. Therefore, forms such as the Trimester Interim Progress Report, CBA Notification Form, CBA Completion Form and the CBA Training Events Report are considered a critical component of the monitoring and evaluation process. Since this program will encompass approximately 34 CBA provider organizations, there is a need for a standardized system for reporting individual episodes of CBA delivered by all CBA provider grantees. The collection of data will help CDC discern and refine national goals and objectives in the prevention of HIV.

CBA providers will be required to submit CBA Trimester Progress Reports (form A). The purpose of the CBA Trimester Progress Report is to describe CBA undertaken during the previous four months. The Trimester Progress Report will be a narrative on the programs' successes and barriers; process and outcome monitoring data; collaborative and cooperative activities with other organizations; and plans for future activities.

To effectively track and monitor all requests for capacity-building assistance, CBA providers will be required to submit a CBA Notification Form (form B) following each contact with a community based organization (CBO) or HIV prevention stakeholder for CBA services. The purpose of this form is to track all requests for services from CBOs, health departments and stakeholders. Requests for CBA from these CBOs and stakeholders are received by CBA providers on an on-going basis.

CBA providers will also be required to submit a CBA Completion Form (form C) following each episode of CBA service delivered to all CBOs and stakeholders. The purpose of this form is to provide feedback and follow-up information to CDC Project Officers on the types of CBA services and quality of services that were delivered to all CBOs by CBA providers. CBA requests from CBOs, health departments, and stakeholders are received by CBA providers on an on-going basis. Information collection will be on-going throughout the duration of the cooperative agreements.

In addition, CBA providers will be required to submit pre-planned CBA training events on a CBA Training Events Report (form D). The CBA Training Events Report is used to disseminate planned capacity building assistance activities delivered by CBA providers, the CDC and other organizations providing training and technical assistance. The calendar is also used as a marketing tool to let CBOs, health departments and stakeholders know what types of technical assistance and training activities are available. There are no costs to respondents other than their participation in the collection of information. The estimated annualized burden is 1,462 hours.

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Form A: CBA Trimester Report	34 CBA Provider Grantees	3	2
Form B: CBA Notification Form	34 CBA Provider Grantees	50	15/60
Form C: CBA Completion Form	34 CBA Provider Grantees	25	30/60
Form D: CBA Training Events Form	34 CBA Provider Grantees	12	1

Dated: September 30, 2004.

Alvin Hall,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 04–22454 Filed 10–5–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5015–N]

Medicare Program; Care Management for High-Cost Beneficiaries (CMHCB) Demonstration

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice informs eligible health care organizations of an opportunity to apply to implement and operate a care management demonstration serving high-cost beneficiaries in the original Medicare fee-for-service (FFS) program. This voluntary demonstration is part of an effort to develop and test multiple strategies to improve the coordination of Medicare services for high-cost FFS beneficiaries. The notice contains information on how to obtain the complete solicitation and supporting information.

DATES: Applications will be considered timely if we receive them on or before January 4, 2005.

ADDRESSES: Mail applications to—Centers for Medicare & Medicaid Services, Attention: Cynthia Mason, Mail Stop: C4–17–27, 7500 Security Boulevard, Baltimore, Maryland 21244.

Because of staff and resource limitations, we cannot accept applications by facsimile (FAX) transmission or by e-mail.

FOR FURTHER INFORMATION CONTACT: Cynthia Mason at (410) 786–6680 or *cmhcbdemo@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Health and Human Services is developing and testing multiple strategies to improve the coordination of Medicare services for beneficiaries with high-cost conditions. However, one approach that remains to be studied is intensive management for high-cost beneficiaries with various medical conditions to reduce cost as well as improve quality of care and quality of life for those beneficiaries. Therefore, we are interested in proposals to restructure care or enhance the management of care for beneficiaries with costly medical conditions. It is anticipated that organizations will serve high-risk beneficiaries with a variety of medical conditions and that the vast majority of beneficiaries participating in the demonstration will have multiple conditions. One organization will be selected per area to offer services to eligible beneficiaries. Beneficiary participation in the programs will be voluntary and will not change the amount, duration or scope of participants' fee-for-service (FFS) Medicare benefits. FFS Medicare benefits will continue to be covered, administered, and paid under the traditional Medicare FFS program. Programs will be offered at no charge to the beneficiary. Organizations chosen for the demonstration will not be able to restrict beneficiary access to care (for example, there can be no utilization review or gatekeeper function) or restrict beneficiaries to a limited number of physicians in a network.

Applicants may propose to serve one or more areas, but their proposed service areas must be adjusted to ensure that the population is of an appropriate size that would ensure statistically significant results. Also, to avoid any overlap between the current FFS care management demonstrations or the Chronic Care Improvement Programs (CCIP), it will be necessary to exclude from the Care Management for High-Cost Beneficiaries (CMHCB) demonstration population any

beneficiaries who meet the criteria to participate in existing demonstrations or CCIP.

Organizations may be paid a monthly fee per participant or participate under a gain-sharing arrangement based on Medicare savings; however, fee and gain-sharing payments will be contingent on improvements in clinical quality of care, beneficiary and provider satisfaction, and savings to Medicare in the intervention groups compared to control groups.

II. Provisions of This Notice

This demonstration is intended to test models of care management for high-cost beneficiaries under the Medicare FFS program, incorporating relevant features from traditional disease management programs, but allowing sufficient flexibility for us and the awardees to adapt the design of CMHCB programs to meet the unique needs of the high-cost Medicare population. For some beneficiaries with high-cost conditions, the restructuring of the care management plan to integrate provider services in the program and to deliver those services in non-acute care locations such as the beneficiary's home could significantly improve the beneficiary's quality of life while simultaneously reducing costs. Under the CMHCB demonstration, we hope to test a variety of models such as intensive case management, increased provider availability, structured chronic care programs, restructured physician practices, and expanded flexibility in care settings to deliver care to high-cost beneficiaries with multiple conditions.

The organization(s) that are awarded the demonstration project will be required to agree to assume financial risk in the event of failure to meet agreed upon performance guarantees for clinical quality, beneficiary and provider satisfaction and savings targets. That financial risk will include all fees and gain-sharing payments.

Organizations eligible to apply to implement and operate care management programs under CMHCB include—

- Physician groups;
- Hospitals; or
- Integrated delivery systems.

Other organizations may apply, but only as part of a consortium that includes physician groups, hospitals, or integrated delivery systems that would play a major role in the operation of the proposed CMHCB demonstration. Eligible organizations must be capable of providing ambulatory health care services.

We plan to make approximately four to six awards. Interested parties can obtain complete solicitation and supporting information on the CMS Web site at *http://www.cms.hhs.gov/researchers/demos/cmhcb.asp.* Paper copies can be obtained by writing to Cynthia Mason at the address listed in the **ADDRESSES** section of this notice.

III. Collection of Information Requirements

This information collection requirement is subject to the Paperwork Reduction Act of 1995 (PRA); however, the collection is currently approved under OMB control number 0938–0880 entitled ''Medicare Demonstration Waiver Application'' with a current expiration date of 7/31/2006.

Authority: Section 402(a)(1)(B) and (a)(2) of the Social Security Amendments of 1967, Pub. L. 90–248, as amended, 42 U.S.C. 1395b–1(a)(1)(B) and (a)(2).

(Catalog of Federal Domestic Assistance No. 93.773 Medicare-Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 15, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 04–22459 Filed 10–1–04; 4:00 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of New Hampshire State Plan Amendment (04–001A)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on November 19, 2004, at 10 a.m., JFK Federal Building, Room E275A, Boston, Massachusetts 02203–0003, to reconsider the decision to disapprove New Hampshire State Plan Amendment (SPA) 04–001A.

DATES: Requests to participate in the hearing as a party must be received by the presiding officer by October 21, 2004.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS, LB–23–20, Lord Baltimore Drive, Baltimore, Maryland 21244, telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider the decision to disapprove New Hampshire State Plan Amendment (SPA) 04–001A, which New Hampshire submitted on March 31, 2004. SPA 04–001A sought to reduce the Estimated Acquisition Cost (EAC) for prescription drugs from Average Wholesale Price (AWP) minus 12 percent to AWP minus 16 percent and the dispensing fee from $2.50 to $1.75 per prescription, effective for the period from January 12, 2004, to March 11, 2004. The CMS reviewed this proposal and for the reasons set forth below, was unable to approve SPA 04–001A as submitted.

At issue is whether the requested effective date of January 12, 2004, is consistent with statutory and regulatory requirements. In a separate action, CMS approved SPA 04–001B, which made the same changes in the EAC and dispensing fee calculations, effective March 12, 2004. Section 1902(a)(30) of the Social Security Act (the Act) requires a state's Medicaid state plan to provide such methods and procedures as may be necessary to ensure that payments are consistent with efficiency, economy, and quality of care. Under that authority, the Secretary has issued regulations prescribing state rate-setting procedures. Federal regulations at 42 CFR 447.205(d) require public notice to be issued prior to the effective date of a significant change in any methods and standards for setting payment rates for services. The state did not issue a public notice for the proposed changes in payment methodology until March 11, 2004. Therefore, the earliest that such changes could be effective is March 12, 2004.

Based on the above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved New Hampshire SPA 04–001A.

Section 1116 of the Act and 42 CFR part 430 establish Departmental procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The CMS is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we also will publish that notice.

Any interested individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any person or organization that wants to participate as *amicus*

curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to New Hampshire announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows: Mr. John A. Stephen, Commissioner, Department of Health and Human Services, 129 Pleasant Street, Concord, NH 03301–3857

Dear Mr. Stephen: I am responding to your request for reconsideration of the decision to disapprove New Hampshire State Plan Amendment (SPA) 04–001A, which the State submitted on March 31, 2004. The SPA 04–001A sought to reduce the Estimated Acquisition Cost (EAC) for prescription drugs from Average Wholesale Price (AWP) minus 12 percent to AWP minus 16 percent and the dispensing fee from $2.50 to $1.75 per prescription, effective for the period from January 12, 2004, to March 11, 2004. The Centers for Medicare & Medicaid Services (CMS) reviewed this proposal, and for the reasons set forth below, was unable to approve SPA 04–001A as submitted.

At issue is whether the requested effective date of January 12, 2004, is consistent with statutory and regulatory requirements. In a separate action, CMS approved SPA 04–001B, which made the same changes in the EAC and dispensing fee calculations, effective March 12, 2004. Section 1902(a)(30) of the Social Security Act (the Act) requires a state's Medicaid state plan to provide such methods and procedures as may be necessary to ensure that payments are consistent with efficiency, economy, and quality of care. Under that authority, the Secretary has issued regulations prescribing state rate-setting procedures. Federal regulations at 42 CFR 447.205(d) require public notice to be issued prior to the effective date of a significant change in any methods and standards for setting payment rates for services. The State did not issue a public notice for the proposed changes in payment methodology until March 11, 2004. Therefore, the earliest that such changes could be effective is March 12, 2004. Based on the above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved New Hampshire SPA 04–001A.

I am scheduling a hearing for November 19, 2004, at 10 a.m., JFK Federal Building, Room E275A, Boston, Massachusetts 02203–0003, to reconsider the decision to disapprove SPA 04–001A. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430. I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication that may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,
Mark B. McClellan, M.D., PhD.

Authority: Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: September 27, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 04–22419 Filed 10–5–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

SES Performance Review Board

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the CMS Senior Executive Service (SES) Performance Review Board.

DATES: Effective September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Donna Mueller, Executive Resources Management Team, Baltimore Human Resources Center, Department of Health and Human Services, C2–12–16, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–5554.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The purpose of the board is to provide fair and impartial review of the initial appraisal prepared by the senior executive's immediate supervisor; to make recommendations to the appointing authority regarding the performance of the senior executive; and to make recommendations for monetary performance awards. Composition of the specific PRB will be determined on an *ad hoc* basis from among the individuals listed below:

Gale Arden, Director, Disabled and Elderly Health Program Group.
Gary Bailey, Deputy Director for Health Plans, Center for Beneficiary Choices.
Dara Bendavid, Director, Program Integrity Group.
Judith Berek, Senior Advisor on National Policy Implementation.
Charlene Brown, Deputy Director, Center for Medicaid and State Operations.
Glenn Chaney, Director, Accounting Management Group.
Rose Crum-Johnson, Atlanta Regional Administrator.
Robert Donnelly, Director, Health Plan Policy Group.
John Dyer, Chief Operating Officer.
James Farris, Dallas Regional Administrator.
Jeffrey Flick, San Francisco Regional Administrator.
Robert Foreman, Director, Office of Legislation.
Richard Foster, Chief Actuary/Director Office of the Actuary.
Wallace Fung, Deputy Director (Technology).
Jacqueline Garner, Chicago Regional Administrator.
Edward Gendron, Director, Financial Systems Budget Group.
Thomas Gustafson, Deputy Director, Center for Medicare Management.
Stuart Guterman, Director, Office of Research, Development and Information.
Thomas Hamilton, Director, Office of Survey and Certification.
Kathleen Harrington, Director, Office of External Affairs.
Timothy B. Hill, Director, Office of Financial Management.
Gary Kavanagh, Director, Business Systems Operations Group.
Carmen Keller, Director, Office of Medicare Adjudication.
James Kerr, New York Regional Administrator.
Thomas Kickham, Director, Partnership and Promotion Group.
Herb Kuhn, Director, Center for Medicare Management.
Mary Laureno, Director, Beneficiary Information Services Group.
Timothy Love, Director, Office of Information Services.
Gail McGrath, Director, Center for Beneficiary Choices.
Michael McMullan, Deputy Director, Center for Beneficiary Choices.
Regina McPhillips, Director, Beneficiary Education and Analysis Group.
Solomon Mussey, Director, Office of Medicare and Medicaid Cost Estimates Group.
Leslie V. Norwalk, Deputy Administrator, Chair.
Kevin Piper, Director, Medicare Reform Implementation.
Elizabeth Richter, Director, Hospital and Ambulatory Policy Group.
Roy Ruff, Seattle Regional Administrator.
Jean Sheil, Director, Family and Children's Health Program Group.

Dennis Smith, Director, Center for Medicaid and State Operations.
Patricia Smith, Director, Health Plans Benefits Group.
Stewart Streimer, Director, Provider Billing Group.
Brenda Sykes, Deputy Director, Office of Operations Management.
Deborah Taylor, Deputy Director, Office of Financial Management.
Joe Tilghman, Kansas City Regional Administrator.
Alexander Trujillo, Denver Regional Administrator.
Sean Tunis, Director, Office of Clinical Standards and Quality.
John Voorhees, Director, Office of Operations Management.
Gerald Walters, Director, Financial Services Group.
Jacqueline White, Director, Office of Strategic Operations and Regulatory Affairs.
Laurence Wilson, Director, Chronic Care Policy Group.
Charlotte Yeh, Boston Regional Administrator.

Dated: September 20, 2004.

Leslie V. Norwalk,

Deputy Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 04–22418 Filed 10–1–04; 11:46 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members of a Public Advisory Committee and Subcommittees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Food Advisory Committee (the Parent Committee) and certain subcommittees of the Food Advisory Committee in FDA's Center for Food Safety and Applied Nutrition (CFSAN). Nominations will be accepted for current vacancies and those that will or may occur through June 30, 2005.

FDA has special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Because scheduled vacancies occur on various dates throughout the year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this document.

ADDRESSES: Send all nominations and curricula vitae to Carolyn Jeletic, Center for Food Safety and Applied Nutrition (HFS–6), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2397, FAX: 301–436–2633, e-mail: *Carolyn.Jeletic@cfsan.fda.gov*.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of voting members for the vacancies listed in table 1 of this document.

I. Vacancies

FDA is requesting nominations of voting members for vacancies listed as follows:

TABLE 1.

Advisory Committee, Subcommittees, and Expertise Needed to Fill Vacancies	Number of Vacancies	Approximate Date Members Are Needed
Food Advisory Committee (Parent Committee): Physical sciences; biological and life sciences; epidemiology; risk assessment; toxicology; nutrition; food science, technology, or engineering; medical and public health sciences; and other relevant scientific and technical disciplines	6	June 30, 2005.
Additives and Ingredients Subcommittee of the Food Advisory Committee: Toxicology and food chemistry	7	June 30, 2005.
Contaminants and Natural Toxicants Subcommittee of the Food Advisory Committee: Food science, food chemistry, food microbiology, toxicology, and risk analysis	4	June 30, 2005.
Dietary Supplements Subcommittee of the Food Advisory Committee: Biological sciences and medical, hospital, dental, and public health	5	June 30, 2005.
Infant Formula Subcommittee of the Food Advisory Committee: Biological sciences and medical, hospital, dental, and public health	3	June 30, 2005.
Food Biotechnology Subcommittee of the Food Advisory Committee: Food biotechnology	5	June 30, 2005.
Nutrition Subcommittee of the Food Advisory Committee: Biological sciences and medical, hospital, dental, and public health	1	June 30, 2005.

II. Functions

The Parent Committee provides advice primarily to the Director of CFSAN, and as needed, to the Commissioner of Food and Drugs, and other appropriate officials, on emerging food safety, food science, nutrition, and other food-related issues that FDA considers of primary importance for its food and cosmetics program. The Parent Committee may be charged with reviewing and evaluating available data and making recommendations on matters such as those relating to the following topics: (1) Broad scientific and technical food or cosmetic related issues, (2) the safety of new foods and food ingredients, (3) labeling of foods and cosmetics, (4) nutrient needs and nutritional adequacy, and (5) safe exposure limits for food contaminants. The Parent Committee also may be asked to provide advice and make recommendations on ways of communicating to the public the potential risks associated with these issues and on approaches that might be considered for addressing the issues.

III. Qualifications

Persons nominated for membership on the Parent Committee and subcommittees shall be knowledgeable in the fields of physical sciences,

biological and life sciences, food science, risk assessment, and other relevant scientific and technical disciplines. The agency is particularly interested in considering candidates with a comprehensive background in food technology, molecular biology, genetics, biotechnology, and a variety of medical specialties, as many issues brought before the Committee involve medical or epidemiological impact on nutrients, additives, contaminants, or other constituents of the diet, such as dietary supplements. The term of office is for up to 4 years, depending on the appointment date.

IV. Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on the Parent Committee or one or more of the subcommittees. Self-nominations are also accepted. Nominations shall include the name of the committee or subcommittee, a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member of the Parent Committee or subcommittee (name of committee/subcommittee(s) must be specified), and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: October 1, 2004.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 04–22498 Filed 10–5–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Memorandum of Understanding Between the State of Iowa, Department of Public Health, Bureau of Radiological Health and the Food and Drug Administration, Center for Devices and Radiological Health

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the State of Iowa, through the Iowa Department of Public Health, Bureau of Radiological Health and the Food and Drug Administration, Center for Devices and Radiological Health, to continue to conduct a State as certifiers program in Iowa under the Mammography Quality Standards Act.

DATES: The agreement became effective August 18, 2004.

FOR FURTHER INFORMATION CONTACT: Joanne Choy, Division of Mammography Quality and Radiation Programs (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2903, or e-mail: *jkc@cdrh.fda.gov*.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: September 30, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

Control No. 225-04-4006

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE STATE OF IOWA

DEPARTMENT OF PUBLIC HEALTH
BUREAU OF RADIOLOGICAL HEALTH

AND

U.S. FOOD AND DRUG ADMINISTRATION
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH
OFFICE OF COMMUNICATION, EDUCATION, AND RADIATION PROGRAMS

I. **PURPOSE**:

The purpose of this Memorandum of Understanding (MOU) is to authorize the State of Iowa, through the Iowa Department of Public Health, Bureau of Radiological Health (Department), to continue to conduct a State as certifiers (SAC) program in Iowa under the Mammography Quality Standards Act (MQSA) (42U.S.C.263b) as amended by the Mammography Quality Standards Reauthorization Act of 1998 (MQSRA). Through this MOU, the United States Food and Drug Administration (FDA) authorizes the Department to enforce MQSA certification standards as approved by the FDA, to issue certificates to mammography facilities to perform inspection of mammography facilities and to take enforcement action against facilities that violate MQSA to ensure safe, reliable, and accurate mammography in Iowa.

II. **BACKGROUND**:

The MQSA (Pub. L. 102-539) was enacted on October 27, 1992, to establish national quality standards for mammography. Subsection 354(q) of the MQSA gives the Secretary of Health and Human Services (Secretary) the power to authorize State programs to carry out certain MQSA certification program requirements. The Secretary has delegated authority under subsection 354(q) to FDA. FDA developed a States as Certifiers Demonstration Project (Project) to allow a limited trial of State Programs under subsection 354(q) of the MQSA. The State of Iowa applied to participate in the Project and was approved by FDA on July 8, 1998. The State's participation in the Project was subsequently renewed, through an MOU, on July 30, 1999. The State of Iowa requested FDA's approval to continue to serve as a certifying state agency after the completion of the Demonstration Project. FDA has approved the State's request and authorizes, through this MOU, the State of Iowa to continue to serve in its capacity as a certifying State.

III. SUBSTANCE OF AGREEMENT:

1. FDA hereby reauthorizes the State of Iowa, through the Department, to carry out the certification requirements of subsections 354(b), (c), (d), (g)(1), (h), (i), and (j) of the MQSA (including the requirements under regulations promulgated pursuant to such subsections). This reauthorization applies to facilities within the Department's jurisdiction.

2. FDA shall continue to carry out subsections 354(e) and (f), may take action under subsections 354(h), (i), and (j) and shall conduct oversight functions under subsections 354(g)(2) and (g)(3) of the MQSA.

3. The State of Iowa shall, in addition, comply with the standards for certification agencies at 21CFR 900.22 and 900.25(b) including but not limited to, the requirements for establishing processes for the following activities:

   - certification and inspection of mammography facilities by qualified MQSA-qualified inspector;
   - appropriate criteria and processes for the suspension and revocation of certificates;
   - prompt investigation of and appropriate enforcement action for facilities performing mammography without certificates, as well as other violations of MQSA;
   - appeals by facilities regarding inspectional findings, enforcement actions, and adverse certification decisions or adverse accreditation decisions after exhausting appeals to their accreditation body;
   - additional mammography review of facilities when the State believes that mammography quality at a facility has been compromised and may present a serious risk to human health;
   - patient and physician notification by the facility when additional mammography review shows that the quality of mammography performed was so inconsistent with established quality standards so as to present a significant risk to human health;
   - timely and accurate electronic transmission of inspection, certification, and compliance data in a format and timeframe determined by FDA;
   - authorization by FDA of changes the State proposes to make to any standard that FDA previously has accepted under 21 CFR 900.21.

4. By October 1st, the beginning of FDA's fiscal year, the State of Iowa shall provide to FDA its plan for inspecting all of the facilities under its jurisdiction during the coming year. At the beginning of each quarter, the State shall provide an update to FDA describing any changes in its annual plan that occurred in the last quarter or are planned for the coming quarter. (Quarters will be calculated on a fiscal rather than calendar year basis, beginning in October and continuing through September of the following year).

5. The State of Iowa will electronically transmit the dates of inspections, and the results of all MQSA facility inspections conducted by the State within 5 business days after conducting the inspection by uploading these data to the MQSA Mammography Program Reporting and Information System (MPRIS) facility inspection data application (FISS).

6. The FDA will bill and charge each inspected mammography facility a fee, in accordance with 42 USC 263b(r)(1), of $509 to cover the FDA's costs for support of the inspection. This fee may be subject to change by FDA. The types of services that will be provided by the FDA are as follows:

   - Training and qualifying inspectors.
   - Billing facilities for the FDA portion of the fees due for annual inspections.
   - Collecting the FDA portion of the facility payments.
   - Developing instrument calibration procedures and calibrating instruments used in the inspections.
   - Supplying, repairing, and replacing inspection equipment.
   - Designing, programming, and maintaining inspection data systems.
   - Administering attributable support to facility inspections.

7. Facilities that qualify as governmental entities (GE) will not be subject to the payment of FDA inspection fees.

8. By the end of each quarter, the State of Iowa shall electronically update and maintain facility noncompliance information via the MPRIS facility compliance tracking data application (FaNTMS) to reflect status and resolution of inspectional findings. Quarters will begin in October and continue through September of the following year.

9. The State of Iowa will, in accordance with 21 CFR 900.23, provide all information as specified by FDA as part of FDA's oversight responsibilities, including keeping FDA's SAC liaison informed of compliance actions as they occur and through resolution (e.g., AMR, PPN, Injunctions, Cease and Desist Order, Suspension, or Revocation).

10. The State of Iowa will provide FDA with updates and revisions to its policies and procedures previously approved by FDA, as appropriate.

11. In the event FDA determines, through its oversight activities under 21 CFR 900.23, or through other means, that the State of Iowa is no longer in substantial compliance with its certification program responsibilities, FDA may take action in accordance with 21 CFR 900.24.

12. FDA will provide to the State of Iowa, under 21 CFR 900.25(a), the opportunity to appeal final actions taken by FDA regarding its approval or withdrawal of approval of the certification body.

13. FDA will provide the State of Iowa with access to the FDA MQSA database (MPRIS).

IV. NAMES AND ADDRESSES OF PARTICIPATING AGENCIES:

State of Iowa:
Bureau of Radiological Health
Iowa Department of Public Health
401 SW 7th Street
Suite D
Des Moines, IA 50309-4611

FDA:
Office of Communication, Education, and Radiation Programs
1350 Piccard Drive
Rockville, MD 20850

V. LIAISON OFFICERS:

For matters and notices related to this MOU:

A. The contact person for the Department is:

Donald A. Flater, Chief
Bureau of Radiological Health
Iowa Department of Public Health
401 SW 7th Street, Suite D
Des Moines, IA 50309-4611
Phone: (515) 281-3478
dflater@idph.state.ia.us

B. The contact person for FDA is:

Joanne Choy
Food and Drug Administration, HFZ-240
Division of Mammography Quality and Radiation Programs
1350 Piccard Drive
Rockville, MD 20850
Phone: (301) 827-2963
jkc@cdrh.fda.gov

Either party may designate in writing different contact persons or addresses.

VI. **PERIOD OF AGREEMENT**:

This MOU will become effective on the date or as of the acceptance by both parties and will continue until termination in writing by either party with a 30-day prior notice (such notice shall be sent to the addresses listed in Section V.) This MOU may be modified by mutual written consent at any time. The MOU will be formally reviewed by the FDA every seven years, and updated or modified as appropriate.

APPROVED AND ACCEPTED FOR THE STATE OF IOWA

8/26/04

(Signature and date)

Mary Mincer Hansen
Director
Iowa Department of Public Health
State of Iowa

APPROVED AND ACCEPTED FOR THE FOOD AND DRUG ADMINISTRATION

8/18/04

(Signature and date)

Lynne L. Rice
Director
Office of Communication, Education, and Radiation Programs
Center for Devices and Radiological Health
Food and Drug Administration

[FR Doc. 04–22497 Filed 10–5–04; 8:45 am]

BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 Cancer Institute Initial Review Group, Subcommittee I—Career Development NCI–I Initial Review of Training Grants.

Date: November 3–4, 2004.

Time: 7:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Robert Bird, PhD, Scientific Review Administrator, Resources and Training Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., MSC 8328, Room 8113, Bethesda, MD 20892–8328, 301–496–7978, *birdr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93,393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22404 Filed 10–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 Cancer Institute Special Emphasis Panel, Spore In Myeloma And Genitourinary Cancer.

Date: December 1–2, 2004.

Time: 6 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Brian E. Wojcik, PhD, Scientific Review Administrator, Grants

Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8019, Bethesda, MD 20892, (301) 402–2785.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: September 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22405 Filed 10–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the President's Cancer Panel.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended, because the premature disclosure of information and the discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: November 1–2, 2004.

Open: November 1, 2004, 8 a.m. to 4 p.m.

Agenda: Translating Research to Reduce Burden of Cancer.

Place: The Frank E. Anderson Conference Hall, MD Anderson Cancer Center, University of Texas, Houston, Texas 77030.

Closed: November 2, 2004, 9 a.m. to 12 p.m.

Agenda: To review and evaluate prepublication manuscripts on Translating Research into Clinical Practice.

Place: The Frank E. Anderson Conference Hall, MD Anderson Cancer Center, University of Texas, Houston, Texas 77030.

Contact Person: Maureen O. Wilson, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 3A18, Bethesda, MD 20892, 301/496–1148.

Any interested person may file written comments with the committee by forwarding the comments to the Contact Person listed on this Notice. The comments should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/pcp/pcp.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: September 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22406 Filed 10–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), 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 Cancer Institute Special Emphasis Panel, EDRN: Data Management and Coordinating Center.

Date: November 4, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Timothy C. Meeker, MD, Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8088, Rockville, MD 20852, 301/594–1279.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: September 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22411 Filed 10–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), 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 Cancer Institute Initial Review Group, Subcommittee F—Manpower & Training, NCI–F Initial Review of Manpower and Training Grants.

Date: November 3–4, 2004.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Avenue, N.W., Washington, DC 20037.

Contact Person: Lynn M. Amende, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8105, Bethesda, MD 20892. 301–451–4759, *amendel@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support;

93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: September 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22412 Filed 10–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 Cancer Institute Special Emphasis Panel, Community Clinical Oncology Program.

Date: November 16–17, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Joyce C. Pegues, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., 7149, Bethesda, MD 20892. (301) 594–1286, *peguesj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: September 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22413 Filed 10–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Strategic Partnership to Evaluate Cancer Signature.

Date: November 18–19, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Marvin L. Salin, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, 6116 Executive Boulevard, Room 7073, MSC8329, Bethesda, MD 20892–8329, (301) 496–0694, *msalin@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22416 Filed 10–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Mentored Patient-Oriented Research Career Development.

Date: October 19, 2004.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.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. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS.)

Dated: September 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22409 Filed10–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Maternofetal Signaling and Lifelong Consequences.

Date: November 1, 2004.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health, and Human Development, National Institutes of Health, 6100 Bldg., Rm. 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS.)

Dated: September 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22410 Filed 10–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Research Training Grants IV.

Date: November 4, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd. Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Exploratory Research Grants.

Date: November 4, 2004.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (telephone conference call).

Contact Person: Bettina D. Acuna, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd. Room 6154, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340, *acunab@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Research Training I.

Date: November 10, 2004.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd. Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, ZMH1 ERB–X–01, Training II.

Date: November 23, 2004.

Time: 11:30 a.m. to 3 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: Benjamin Xu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd. Room 6143, MSC 9608, Bethesda, MD 20892–9608, 301–443–1178, *benxu1@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS.)

Dated: September 29, 2004.

Laverne Y. Stringfield

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22414 Filed 10–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 General Medical Sciences Special Emphasis Panel, Pharmacology.

Date: October 25–26, 2004.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Chapel Hill Hotel, One Europe Drive, Chapter Hill, NC 27514.

Contact Person: Shiva P. Singh, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12C, Bethesda, MD 20892, (301) 594–2272, *singhs@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: September 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22415 Filed 10–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel ''Review of an Unsolicited R24 Application''.

Date: October 26, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Marc L. Lesnick, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3264, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 594–6636, *ml436d@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22417 Filed 10–5–04– 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 Library of Medicine Special Emphasis Panel, P41's/R21's.

Date: November 5, 2004.

Time: 8 a.m. to 4:30 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: Hua-Chuan Sim, MD, Health Science Administrator, National Library of Medicine, Extramural Programs, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: September 29, 2004

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Commmittee Policy.

[FR Doc. 04–22407 Filed 10–5–04; 8:45 am]

BILLING CODE 4140–01–M

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. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts in Biobehavioral Regulation.

Date: October 7, 2004.

Time: 2 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Luci Roberts, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, *roberlu@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, Renal Small Business Applications.

Date: October 13, 2004.

Time: 11 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198, *hildens@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: Hematology Integrated Review Group, Hemostasis and Thrombosis Study Section.

Date: October 21–22, 2004.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov*.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Electrical Signaling, Ion Transport, and Arrhythmias Study Section.

Date: October 28–29, 2004.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rajiv Kumar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group, Cellular and Molecular Immunology—A.

Date: October 28–29, 2004.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306; Comparative Medicine; 93.3033 Clinical Research, 93.306; 93.333; 93.337; 93.393–93.396; 93.837–93.844; 93.846–93.878; 93.892; 93.893, National Institutes of Health, HHS.)

Dated: September 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22408 Filed 10–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–19253]

National Boating Safety Activities: Funding for National Nonprofit Public Service Organizations

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard seeks applications for fiscal year 2005 grants and cooperative agreements from national, nongovernmental, nonprofit, public service organizations. These grants and cooperative agreements would be used to fund projects on various subjects promoting recreational boating safety on the national level. This notice provides information about the grant and cooperative agreement application process and some of the subjects of particular interest to the Coast Guard.

DATES: Application packages may be obtained on or after October 18, 2004. Proposals for the fiscal year 2005 grant cycle must be received before 3 p.m. eastern time, January 18, 2005.

ADDRESSES: Application packages may be obtained by calling the Coast Guard Infoline at 800–368–5647. Submit proposals to: Commandant (G–OPB–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 3100, Washington, DC 20593–0001. This notice is available from the Coast Guard Infoline and on the Internet at *http://dms.dot.gov* in docket USCG–2004–19253 or at the Web Site for the Office of Boating Safety at http://www.uscgboating.org.

FOR FURTHER INFORMATION CONTACT: Ms. Vickie Hartberger, Office of Boating Safety, U.S. Coast Guard (G–OPB–1/room 3100), 2100 Second Street, SW., Washington, DC 20593–0001; (202) 267–0974. The points of contact for the ten project areas are listed at the end of the description of each project area.

SUPPLEMENTARY INFORMATION: Title 46, United States Code, section 13103, allocates funds available from the Aquatic Resources Trust Fund for boating safety grants. The majority of funds are allocated to the States, and up to 5 percent of these funds may be distributed by the Coast Guard for grants and cooperative agreements to national, nonprofit, public service organizations for national recreational boating safety activities. It is anticipated that up to $2,950,000 will be made available for fiscal year 2005. Thirty awards totaling $2,950,000 were made in fiscal year 2004 ranging from $7,000 to $465,000. Nothing in this announcement should be construed as committing the Coast Guard to dividing available funds among qualified applicants or awarding any specified amount.

It is anticipated that several awards will be made by the Director of Operations Policy, U.S. Coast Guard. Applicants must be national, nongovernmental, nonprofit, public service organizations and must establish that their activities are, in fact, national in scope. An application package may be obtained by writing or calling the point of contact listed in **ADDRESSES** on or after October 18, 2004. The application package contains all necessary forms, an explanation of how the grant program is administered, and a checklist for submitting a grant application. Specific information on organization eligibility, proposal requirements, award procedures, and financial administration procedures may be obtained by contacting the person listed in **FOR FURTHER INFORMATION CONTACT**.

Prospective grantees may propose up to a 5-year grant with 12-month (fiscal year) increments. In effect, an award would be made for the first year and thereafter renewal is optional. Each annual increment would not be guaranteed. Under a continuation (multi-year) grant type of award the Coast Guard agrees to support a grant project at a specific level of effort for a specified period of time, with a statement of intention to provide certain additional future support, provided funds become available, the achieved results warrant further support, and are in support of the needs of the government. Award of continuation grants will be made on a strict case-by-case basis to assist planning certain large scale projects and ensure continuity. Procedures also provide for awarding noncompetitive grants or cooperative agreements on a case-by-case basis. This authority is judiciously used to fund recurring annual projects or events which can only be carried out by one organization, and projects that present targets of opportunity for timely action on new or emerging program requirements or issues.

The following list includes items of specific interest to the Coast Guard, however, potential applicants should not be constrained by the list. We welcome any initiative that supports the organizational objectives of the Recreational Boating Safety Program to save lives, reduce the number of boating accidents, injuries and property damage, and lower associated health care costs. Some project areas of continuing and particular interest for grant funding include the following:

1. *Develop and Conduct a National Annual Safe Boating Campaign.* The Coast Guard seeks a grantee to develop and conduct the year 2006 National Annual Safe Boating Campaign that targets specific boater market segments and recreational boating safety topics. This year-round campaign must support the organizational objectives of the Recreational Boating Safety Program and the nationwide grassroots activities of the many volunteer groups who coordinate local media events, education programs, and public awareness activities, as well as complement the Coast Guard ''You're In Command'' campaign. The major focus of the campaign will be to affect the behavior of all boaters with special focus on boat operators being responsible for their own safety as well as the safety of their passengers. A significant emphasis should be placed on life jacket wear, safety and security issues, and the dangers of carbon monoxide, as well as boating under the influence of alcohol or a dangerous drug. Efforts will also be coordinated, year-round, with other national safety activities and special media events. Point of Contact: Ms. Jo Calkin, (202) 267–0994.

2. *Develop and Conduct a National Recreational Boating Safety Outreach and Awareness Conference.* The Coast Guard seeks a grantee to plan, implement, oversee, and conduct a National Recreational Boating Safety Outreach and Awareness Conference that supports the organizational objectives of the Recreational Boating Safety Program. The overall conference focus should have promotional strategies with special focus on boat operators being responsible for their own safety as well as the safety of their passengers. Significant emphasis should be placed on offering multiple subject

matter areas that afford the participants professional development opportunities and educational enhancement. Areas should focus on, but not be limited to: life jacket wear, safety and security issues, the dangers of carbon monoxide, boating education, vessel safety, as well as boating under the influence of alcohol or a dangerous drug. Point of Contact: Ms. Jo Calkin, (202) 267–0994.

3. *State/Federal/Boating Organizations Cooperative Partnering Efforts.* The Coast Guard seeks a grantee to provide programs to encourage greater participation and uniformity in boating safety efforts. Applicants would provide a forum to encourage greater uniformity of boating laws and regulations, reciprocity among jurisdictions, and closer cooperation and assistance in developing, administering, and enforcing Federal and State laws and regulations pertaining to boating safety. Point of Contact: Ms. Audrey Pickup, (202) 267–0872.

4. *Voluntary Standards Development Support.* The Coast Guard seeks a grantee to carry out a program to encourage active participation by members of the public and other qualified persons in the development of technically sound voluntary safety standards for boats and associated equipment. Point of Contact: Mr. Richard Kanehl, (202) 267–0976.

5. *Develop and Conduct Boating Accident Investigation Seminars.* The Coast Guard seeks a grantee to develop, provide instructional material, and conduct training courses nationwide for boating accident investigators, including three courses at the U.S. Coast Guard Reserve Training Center in Yorktown, Virginia. Point of Contact: Mr. Rick Gipe, (202) 267–0985.

6. *National Estimate of Personal Flotation Devices (PFDs) Wear Rate.* The Coast Guard seeks a grantee to develop a statistically valid national estimate and evaluation of wear rates of PFDs by recreational boaters. Wear rate should be determined by actual observation of boaters. Point of Contact: Mr. Bruce Schmidt, (202) 267–0985.

7. *Flotation Foam Study.* The Coast Guard seeks a grantee to conduct short and long-term testing on marine-rated flotation foam products to include the following: foam chemistry; blowing agents; manufacturing and process control; freeze-thaw cycles; mechanical vibration; biological/bacterial agents; salt/fresh water; and solvents. Point of Contact: Mr. Po Chang, (202) 267–0986.

8. *Navigation Lighting on Barges.* The Coast Guard seeks a grantee to research and analyze the danger posed to recreational boaters by barges, both under tow and being pushed, under the conditions of reduced visibility. The grantee would provide recommendations for additional lighting or other means to increase the visibility of the barges. Any lighting recommendations must be consistent with Rule 20 of the Navigation Rules (33 U.S.C. 2020), that is, additional lights cannot be mistaken for the lights specified in the Rules and do not impair their visibility or distinctive character. Point of Contact: Mr. Dick Blackman, (202) 267–6810.

9. *Propeller Injury Protection.* The Coast Guard seeks a grantee to conduct a market survey of available propeller injury mitigation technology, access the technical characteristics of each, and prepare a report summarizing available options and the advantages and disadvantages of each in various boating activities such as watersports, fishing, cruising, etc. Point of Contact: Mr. Richard Blackman, (202) 267–6810.

Potential grantees should focus on partnership, *i.e.*, exploring other sources, linkages, in-kind contributions, cost sharing, and partnering with other organizations or corporations. We encourage proposals addressing other boating safety concerns.

Please note: This will be the final year our office will be publishing a notice of availability of funding for national nonprofit public service organizations in the **Federal Register**. Under Department of Homeland Security policy, we will announce future availability of funding electronically, at the Web site: *http://www.grants.gov*. Please visit this Web site for our future announcements.

The Boating Safety Financial Assistance Program is listed in section 97.012 of the Catalog of Federal Domestic Assistance.

Dated: September 30, 2004.

James W. Underwood,

Rear Admiral, U. S. Coast Guard, Director of Operations Policy.

[FR Doc. 04–22506 Filed 10–5–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD07–04–114]

Reorganization and Consolidation of The Greater Antilles Section (GANTSEC), Marine Safety Office (MSO) San Juan and Base San Juan

AGENCY: Coast Guard, DHS.

ACTION: Notice of organizational change.

SUMMARY: The Coast Guard announces the consolidation of The Greater Antilles Section (GANTSEC), Marine Safety Office (MSO) San Juan and Base San Juan into one command, Sector San Juan. The Sector San Juan Commanding Officer will have the authority, responsibility and missions of the Section Commander and Commanding Officer, Marine Safety Office (MSO). The Commanding Officer of Air Station Borinquen, formerly a GANTSEC command, will report to the Sector Commanding Officer. The Coast Guard has established a continuity of operations whereby all previous practices and procedures will remain in effect until superseded by an authorized Coast Guard official and/or document.

DATES: This notice is effective October 6, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD07–04–114 and are available for inspection or copying at District 7 Resources, 9th Floor, 909 SE 1st Avenue, Miami, FL 33131 between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Carlos A. Cuesta, District 7 Resources Program at 305–415–6706.

SUPPLEMENTARY INFORMATION:

Discussion of Notice

Sector San Juan will be composed of a Response Command, Prevention Command, and Logistics Command. All existing missions and functions performed by GANTSEC will be realigned under this new organizational structure as of September 30, 2004.

Sector San Juan will be responsible for all Coast Guard missions in the zone delineated in 33 CFR 3.35–25 as follows: ''The San Juan Marine Inspection Zone and Captain of the Port Zone are comprised of both the Commonwealth of Puerto Rico and the Territory of the Virgin Islands and the adjacent waters to the outermost extent of the EEZ, subject to existing laws and regulations.'' There will be no change to the San Juan Marine Inspection Zone, Captain of the Port Zone, and Search and Rescue (SAR) Boundaries as a result of this reorganization.

Sector San Juan is designated a rescue sub-center and, as such, is responsible as SAR Mission Coordinator for search and rescue operations both within and beyond the exclusive economic zone (EEZ) as specified in the Seventh District standard operating procedures.

The Sector San Juan Commander is vested with all the rights, responsibilities, duties, and authority of

a Group Commander and Commanding Officer, Marine Safety Office, as provided for in Coast Guard regulations. The Sector San Juan Commander is designated: (a) Captain of the Port (COTP) for the San Juan COTP zone; (b) Federal Maritime Security Coordinator (FMSC); (c) Federal On Scene Coordinator (FOSC) for the San Juan COTP zone, consistent with the National Contingency Plan; (d) Officer In Charge of Marine Inspection (OCMI) for the San Juan Marine Inspection Zone and, (e) Search and Rescue Mission Coordinator (SMC). The Deputy Sector Commander is designated alternate COTP, FMSC, FOSC, OCMI and SMC. A continuity of operations order has been issued to address existing COTP regulations, orders, directives and policies.

The following information is a list of updated command titles, addresses and points of contact to facilitate requests from the public and assist with entry into security or safety zones:

Name: Sector San Juan.

Address: Commander, U.S. Coast Guard Sector San Juan, 5 Calle La Puntilla, San Juan, PR 00901–1800.

Contact: Operations Center, (787) 289–2040, Sector Commander: (787) 289–2399, Deputy Sector Commander: (305) 289–2300.

Dated: September 27, 2004.

D. B. Peterman,

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

[FR Doc. 04–22503 Filed 10–5–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that an information collection request for Bureau of Indian Affairs (BIA) Form 4432, Verification of Indian Preference for Employment in the BIA and the Indian Health Service (IHS), OMB Control No. 1076–0160, needs renewal. The BIA is now seeking comments from interested parties to renew the clearance.

DATES: Written comments must be submitted by December 6, 2004.

ADDRESSES: Written comments are to be mailed or hand delivered to Daisy West, Acting Chief, Division of Tribal Government Services, Office of Tribal Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., MS–320–SIB, Washington, DC 20240; Telephone: (202) 513–7641.

FOR FURTHER INFORMATION CONTACT: Carolyn Newman, (202) 513–7641.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of the Indian Preference Form is to encourage qualified Indians to seek preference in employment with the BIA and the IHS. BIA collects information under the proposed regulations to ensure compliance with Indian preference hiring requirements.

II. Method of Collection

The information collection relates only to individuals applying for employment with the BIA and the IHS. The tribe's involvement is limited to verifying membership information submitted by the applicant.

III. Data

Title of the collection of information: Verification of Indian Preference for Employment in the BIA and IHS Form.

Type of review: Renewal of Indian Preference for Employment in the BIA and IHS Form.

Summary of the collection of information: The collection of information provides that certain persons who are of Indian descent receive preference when appointments are made to vacancies in positions with the BIA and IHS as well as in any unit that has been transferred intact from the BIA to a Bureau or office within the Department of the Interior or the Department of Health and Human Services and that continues to perform the functions formerly performed as part of the BIA or IHS. You are eligible for preference if (a) you are a member of a federally recognized Indian tribe; (b) you are a descendant of a member and you were residing within the present boundaries of any Indian reservation on June 1, 1934; (c) you are an Alaska Native; or (d) you possess one-half degree Indian blood derived from tribes that are indigenous to the United States.

Description of the need for the information and proposed use of the information: The information is submitted in order to retain a benefit, namely, preference in employment with the BIA and IHS.

Affected entities: Qualified Indian applicants and the tribe's involvement in verifying membership information submitted by the applicant.

Estimated number of respondents: Approximately a total of 5,000 applications for preference in employment are received annually by the BIA field offices.

Proposed frequency of responses: On occasion as needed.

Burden: The average burden of submitting an Indian Preference Form is 30 minutes including time for reviewing instructions, searching data sources and assembling the information needed. We estimate that the annual public burden is 2,500 hours.

Estimated cost: There are no costs to consider, except postage and the cost of duplicating the original verification form, because verification of the information is already available for other reasons. The form will be used by an applicant to seek documentation of Indian descent or membership from either a tribal official or the BIA.

IV. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the BIA, including whether the information will have practical utility;

(b) The accuracy of the BIA's estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

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

All written comments will be available for public inspection in Room

320 of the South Interior Building, 1951 Constitution Avenue, NW., Washington, DC from 9 a.m. until 3 p.m., Monday through Friday, excluding legal holidays. If you wish to have your name and address withheld from public view, you must state this prominently at the beginning of your comments. We will honor your request to the extent allowable by law. There may be instances when we will withhold comments from the public for other reasons. Comments submitted by businesses or business representatives will be made available for public review.

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.

Dated: September 28, 2004.

David W. Anderson,

Assistant Secretary—Indian Affairs.

[FR Doc. 04–22455 Filed 10–5–04; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Court Budget Data Collection Instrument

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Proposed Information Collection.

SUMMARY: The Bureau of Indian Affairs is seeking comments on a collection of information about tribal courts and Courts of Indian Offenses, the caseloads and kinds of cases, the number of personnel necessary to meet legal requirements, and the costs of operating tribal courts for budget and other purposes. Data of this nature was collected under the auspices of tribal representatives of the Judicial Subgroup—BIA/Tribal Budget Advisory Council. They now desire to associate with the Bureau of Indian Affairs (Bureau) for the collection of this data. Accordingly, OMB approval and a control number are being requested.

DATES: Submit comments on or before December 6, 2004.

ADDRESSES: Send comments to Ralph Gonzales, Office of Tribal Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., MS–320–SIB, Washington, DC 20240; Telephone (202) 513–7629; Fax (202) 208–5113.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the proposed information collection request from Ralph Gonzales, Office of Tribal Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., MS–320–SIB, Washington, DC 20240; Telephone (202) 513–7629; Fax (202) 208–5113.

SUPPLEMENTARY INFORMATION: The data collection instrument will gather information about a tribal court's operation relative to its costs, number of court personnel employed, adequacy of facilities, tribal codes enforced, geographical area of operation, and traditional mediation procedures used. The data is gathered under the authority of the Indian Tribal Justice Act, Public Law 103–176 (25 U.S.C. 3601) (the Act) which provides at Section 101(f):

> ''INFORMATION CLEARINGHOUSE OF TRIBAL JUSTICE SYSTEMS. The Office shall maintain an information clearinghouse (which shall include an electronic data base) on tribal justice systems and Courts of Indian Offenses, including (but not limited to) information on staffing, funding, model tribal codes, tribal justice activities, and tribal judicial decisions.''

The data gathered will primarily be used for budgetary purposes. The Act further provides at Section 1(2) ''the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government.'' Section 1(4) provides ''Indian tribes possess the inherent authority to establish their own form of government, including tribal justice systems.'' The Bureau must perform its fiduciary responsibility and assist tribal governments in supporting tribal judicial systems by bringing tribal courts to par with non-Indian court systems. The data collected under this initiative will be a start toward achieving this objective.

Tribal governments will be given the opportunity to document their tribal court's unmet need. The data will be collected electronically to reduce the burden upon the tribal government in providing tribal court data. Data will be gathered as a part of the Bureau's budget cycle and will be collected only once annually.

The Assistant Secretary—Indian Affairs established a BIA/Tribal Budget Advisory Council to provide advice on the development of a budget for the Bureau. The Council determined that the tribal courts were a priority because of the continued lack of adequate funding. A Judicial Subgroup was formed to determine what information was needed from the courts to meet all their funding needs. This group derives its authority to request the information from Section 101(f) of the Indian Tribal Justice Act, Public Law 103–176 (25 U.S.C. 3601). The lack of adequate funding has created a critical backlog in caseload for tribal courts, causing some cases to be dismissed because the courts cannot hear the cases in a timely manner. The consequences of this backlog is that justice is not provided in a timely manner, many legitimate cases are dismissed, and all sectors of Indian Country, including law abiding citizens as well as the law-breakers, get the impression that crime can be committed on an Indian reservation with impunity.

The Subgroup has identified the need for the following information: Tribe(s) operating a tribal court system; population covered/serviced; geographical area covered by the court; number and kinds of court personnel presently and that which is needed to provide adequate judicial services; facilities available/needed; kinds and number of caseloads; jury and judicial hearings required; evaluation of services provided, including personnel; span of civil and criminal control. The information will be provided annually to allow time for inclusion in the Bureau's budget cycle.

Request for Comments

The Bureau of Indian Affairs requests your comments on this collection concerning:

(a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) Ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, room 320, during the hours of 8 a.m. to 5 p.m. (EST), Monday through Friday, except for legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the

law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

Information Collection Abstract

Type of review: New.

Title: Information Clearinghouse on Tribal Justice Systems.

OMB Control Number: 1076–NEW.

Need and use of the information: The information will be gathered using a simple questionnaire requiring single entries or by checking options provided. The responses will be used to support the respondents' request to receive or maintain a benefit, funding for the court systems, and specifically, an increase in funding for tribal courts as a result of this data collection initiative.

Description of respondents: An employee of the tribal court, usually the court clerk or the court administrator, will enter the data required into the form available electronically.

Number of Annual Responses: 180.

Estimated Time per Response: 20 minutes.

Frequency of Response: Annually.

Total Annual Hourly Burden to Respondents: 60 hours.

Dated: September 28, 2004.

David W. Anderson,

Assistant Secretary—Indian Affairs.

[FR Doc. 04–22456 Filed 10–5–04; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–05–1310–DB]

Notice of Meetings of the Pinedale Anticline Working Group's Water Resources Task Group

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group (PAWG) Water Resources Task Group (subcommittee) will meet in Pinedale, Wyoming, for business meetings. The meetings are open to the public.

DATES: The PAWG Water Resources Task Group will meet October 21, 2004, November 10, 2004, and January 13, 2005, beginning at 9 a.m. and continuing until finished, as late as 5 p.m.

ADDRESSES: The October 21, 2004, meeting of the PAWG Water Task Group will be held in the large conference room of the Bureau of Land Management Office, 432 E. Mill St., Pinedale, WY. The November 10, 2004, and January 13, 2005, meetings will be held in the Lovatt Meeting Room of the Sublette County Public Library at 155 S. Tyler Avenue, Pinedale, WY.

FOR FURTHER INFORMATION CONTACT: Catharine Woodfield, BLM/Water ResourcesTG Liaison, Bureau of Land Management, Pinedale Field Office, 432 E. Mill St., P.O. Box 768, Pinedale, WY 82941; (307) 367–5360.

SUPPLEMENTARY INFORMATION: The Pinedale Anticline Working Group (PAWG) was authorized and established with release of the Record of Decision (ROD) for the Pinedale Anticline Oil and Gas Exploration and Development Project on July 27, 2000. The PAWG advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field (PAPA) proceeds for the life of the field. After the ROD was issued, Interior determined that a Federal Advisory Committees Act (FACA) charter was required for this group. The charter was signed by Secretary of the Interior, Gale Norton, on August 15, 2002, and renewed on August 13, 2004. An announcement of committee initiation and call for nominations was published in the **Federal Register** on February 21, 2003, (68 FR 8522). PAWG members were appointed by Secretary Norton on May 4, 2004.

At their second business meeting, the PAWG established seven resource- or activity-specific Task Groups: Air Quality; Water Resources; Reclamation; Wildlife; Socio-Economic; Cultural/Historic/Visual Resources; and Transportation. Public participation on those Task Groups was solicited through the media, letters, and word-of-mouth. The initial Task Group meeting agenda will include: review of Task Group charges from the Pinedale Anticline Oil and Gas Exploration and Development Project ROD and the PAWG (developing monitoring plan(s) for the surface and ground water resources in the Anticline gas field, identifying who will do the monitoring, and identifying who will pay for the monitoring); developing a strategy to accomplish those tasks for recommendation to the PAWG by February, 2005; and selecting Task Group leadership and a proceedings recorder. Subsequent meeting agendas will include developing the monitoring plan(s) and identifying who will do the monitoring and how those costs will be paid. Public comments will be heard just prior to adjournment at each meeting.

Dated: September 30, 2004.

Donald A. Simpson,

Acting State Director.

[FR Doc. 04–22461 Filed 10–5–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–05–1310–DB]

Notice of Meetings of the Pinedale Anticline Working Group's Transportation Task Group

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM), Pinedale Anticline Working Group (PAWG) Transportation Task Group (subcommittee) will meet in Pinedale, Wyoming, for business meetings. The meetings are open to the public.

DATES: The PAWG Transportation Task Group will meet October 26, 2004, at 4 p.m.; and on November 16 and December 7, 2004, at 1 p.m. All meetings will continue until finished, as long as 4 hours each.

ADDRESSES: All meetings of the PAWG Transportation Task Group will be held in the Lovatt Meeting Room of the Sublette County Public Library at 155 S. Tyler Avenue, Pinedale, WY.

FOR FURTHER INFORMATION CONTACT: Bill Wadsworth, BLM/Transportation TG Liaison, Bureau of Land Management, Pinedale Field Office, 432 E. Mill St., PO Box 768, Pinedale, WY 82941; (307) 367–5341.

SUPPLEMENTARY INFORMATION: The Pinedale Anticline Working Group (PAWG) was authorized and established with release of the Record of Decision (ROD) for the Pinedale Anticline Oil and Gas Exploration and Development Project on July 27, 2000. The PAWG advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field (PAPA) proceeds for the life of the field. After the ROD was issued, Interior determined that a Federal Advisory Committees Act (FACA) charter was required for this

group. The charter was signed by Secretary of the Interior, Gale Norton, on August 15, 2002, and renewed on August 13, 2004. An announcement of committee initiation and call for nominations was published in the **Federal Register** on February 21, 2003, (68 FR 8522). PAWG members were appointed by Secretary Norton on May 4, 2004.

At their second business meeting, the PAWG established seven resource- or activity-specific Task Groups: Air Quality; Water Resources; Reclamation; Wildlife; Socio-Economic; Cultural/Historic/Visual Resources; and Transportation. Public participation on those Task Groups was solicited through the media, letters, and word-of-mouth. The initial Task Group meeting agenda will include: review of Task Group charges from the Pinedale Anticline Oil and Gas Exploration and Development Project ROD and the PAWG (developing monitoring plan(s) for transportation activities in the Anticline gas field, identifying who will do the monitoring, and identifying who will pay for the monitoring); developing a strategy to accomplish those tasks for recommendation to the PAWG by February, 2005; and selecting Task Group leadership and a proceedings recorder. Subsequent meeting agendas will include developing the monitoring plan(s) and identifying who will do the monitoring and how those costs will be paid. Public comments will be heard just prior to adjournment at each meeting.

Dated: September 30, 2004.

Donald A. Simpson,

Acting State Director.

[FR Doc. 04–22462 Filed 10–5–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–05–1310–DB]

Notice of Meetings of the Pinedale Anticline Working Group's Cultural/Historic/Visual Task Group

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group (PAWG) Cultural/Historic/Visual Task Group (subcommittee) will meet in Pinedale, Wyoming, for a business meeting. The meeting is open to the public.

DATES: The PAWG Cultural/Historic/Visual Task Group will meet October 26, 2004, from 5 p.m. until finished, as late as 9 p.m.

ADDRESSES: The meeting of the PAWG Cultural/Historic/Visual Task Group will be held in the large conference room of the Bureau of Land Management Office, 432 E. Mill St., Pinedale, WY.

FOR FURTHER INFORMATION CONTACT: Dave Vlcek or Kierson Crume, BLM-Cultural/Historic/VisualTG Liaisons, Bureau of Land Management, Pinedale Field Office, 432 E. Mill St., PO Box 768, Pinedale, WY 82941; 307–367–5327 or 307–367–5343.

SUPPLEMENTARY INFORMATION: The Pinedale Anticline Working Group (PAWG) was authorized and established with release of the Record of Decision (ROD) for the Pinedale Anticline Oil and Gas Exploration and Development Project on July 27, 2000. The PAWG advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field (PAPA) proceeds for the life of the field.

After the ROD was issued, Interior determined that a Federal Advisory Committees Act (FACA) charter was required for this group. The charter was signed by Secretary of the Interior, Gale Norton, on August 15, 2002, and renewed on August 13, 2004. An announcement of committee initiation and call for nominations was published in the **Federal Register** on February 21, 2003, (68 FR 8522). PAWG members were appointed by Secretary Norton on May 4, 2004.

At their second business meeting, the PAWG established seven resource- or activity-specific Task Groups: Air Quality; Water Resources; Reclamation; Wildlife; Socio-Economic; Cultural/Historic/Visual Resources; and Transportation. Public participation on those Task Groups was solicited through the media, letters, and word-of-mouth.

The Task Group meeting agenda will include: Review of Task Group charges from the Pinedale Anticline Oil and Gas Exploration and Development Project ROD and the PAWG (developing monitoring plan(s) for the cultural, historic, and visual resources in the Anticline gas field, identifying who will do the monitoring, and identifying who will pay for the monitoring); developing a strategy to accomplish those tasks for recommendation to the PAWG by February, 2005; selecting Task Group leadership and a proceedings recorder; and setting times, dates, locations, and agendas for subsequent meetings. Public comments will be heard just prior to adjournment of the meeting.

Dated: September 30, 2004.

Donald A. Simpson,

Acting State Director.

[FR Doc. 04–22463 Filed 10–5–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–05–1310–DB]

Notice of Meetings of the Pinedale Anticline Working Group's Socio-Economic Task Group

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group (PAWG) Socio-Economic Task Group (subcommittee) will meet in Pinedale, Wyoming, for business meetings. The meetings are open to the public.

DATES: The PAWG Socio-Economic Task Group will meet October 27, November 17, and December 14, 2004, from 10 a.m. to 5 p.m.

ADDRESSES: The meetings of the PAWG Socio-Economic Task Group will be held in the Lovatt Room of the Sublette County Public Library, 155 S. Tyler Ave., Pinedale, WY.

FOR FURTHER INFORMATION CONTACT: Roy Allen, BLM/Socio-EconomicTG Liaison, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Rd, Cheyenne, WY 82009; or PO Box 1828, Cheyenne, WY 82003; 307–775–6196.

SUPPLEMENTARY INFORMATION: The Pinedale Anticline Working Group (PAWG) was authorized and established with release of the Record of Decision (ROD) for the Pinedale Anticline Oil and Gas Exploration and Development Project on July 27, 2000. The PAWG advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field (PAPA) proceeds for the life of the field. After the ROD was issued, Interior determined that a Federal Advisory Committees Act (FACA) charter was required for this group. The charter was signed by

Secretary of the Interior, Gale Norton, on August 15, 2002, and renewed on August 13, 2004. An announcement of committee initiation and call for nominations was published in the **Federal Register** on February 21, 2003, (68 FR 8522). PAWG members were appointed by Secretary Norton on May 4, 2004.

At their second business meeting, the PAWG established seven resource- or activity-specific Task Groups: Air Quality; Water Resources; Reclamation; Wildlife; Socio-Economic; Cultural/Historic/Visual Resources; and Transportation. Public participation on those Task Groups was solicited through the media, letters, and word-of-mouth. The initial Task Group meeting agenda will include: review of Task Group charges from the Pinedale Anticline Oil and Gas Exploration and Development Project ROD and the PAWG (developing monitoring plan(s) for the wildlife resources in the Anticline gas field, identifying who will do the monitoring, and identifying who will pay for the monitoring); developing a strategy to accomplish those tasks for recommendation to the PAWG by February, 2005; and selecting Task Group leadership and a proceedings recorder. Subsequent meeting agendas will include developing the monitoring plan(s) and identifying who will do the monitoring and how those costs will be paid. Public comments will be heard just prior to adjournment at each meeting.

Dated: September 30, 2004.

Donald A. Simpson,

Acting State Director.

[FR Doc. 04–22464 Filed 10–5–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–05–1310–DB]

Notice of Meetings of the Pinedale Anticline Working Group's Reclamation Task Group

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group (PAWG) Reclamation Task Group (subcommittee) will meet in Pinedale, Wyoming, for business meetings. The meetings are open to the public.

DATES: The PAWG Reclamation Task Group will meet October 27, November 10, December 8, and December 15, 2004, beginning at 6 p.m. and continuing until finished, as late as 10 p.m. They will meet November 17, 2004, beginning at 5:30 p.m. and continuing until finished, as late as 9:30 p.m.

ADDRESSES: All meetings of the PAWG Reclamation Task Group will be held in the Lovatt Meeting Room of the Sublette County Public Library at 155 S. Tyler Avenue, Pinedale, WY.

FOR FURTHER INFORMATION CONTACT: Dessa Dale, BLM/ReclamationTG Liaison, Bureau of Land Management, Pinedale Field Office, 432 E. Mill St., PO Box 768, Pinedale, WY 82941; (307) 367–5321.

SUPPLEMENTARY INFORMATION: The Pinedale Anticline Working Group (PAWG) was authorized and established with release of the Record of Decision (ROD) for the Pinedale Anticline Oil and Gas Exploration and Development Project on July 27, 2000. The PAWG advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field (PAPA) proceeds for the life of the field. After the ROD was issued, Interior determined that a Federal Advisory Committees Act (FACA) charter was required for this group. The charter was signed by Secretary of the Interior, Gale Norton, on August 15, 2002, and renewed on August 13, 2004. An announcement of committee initiation and call for nominations was published in the **Federal Register** on February 21, 2003, (68 FR 8522). PAWG members were appointed by Secretary Norton on May 4, 2004.

At their second business meeting, the PAWG established seven resource- or activity-specific Task Groups: Air Quality; Water Resources; Reclamation; Wildlife; Socio-Economic; Cultural/Historic/Visual Resources; and Transportation. Public participation on those Task Groups was solicited through the media, letters, and word-of-mouth. The initial Task Group meeting agenda will include: review of Task Group charges from the Pinedale Anticline Oil and Gas Exploration and Development Project ROD and the PAWG (developing monitoring plan for the reclamation process in the Anticline gas field, identifying who will do the monitoring, and identifying who will pay for the monitoring); developing a strategy to accomplish those tasks for recommendation to the PAWG by February, 2005; and selecting Task Group leadership and a proceedings recorder. Subsequent meeting agendas will include developing the monitoring plan and identifying who will do the monitoring and how those costs will be paid. Public comments will be heard just prior to adjournment at each meeting.

Dated: September 30, 2004.

Donald A. Simpson,

Acting State Director.

[FR Doc. 04–22465 Filed 10–5–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–05–1310–DB]

Notice of Meetings of the Pinedale Anticline Working Group's Wildlife Task Group

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group (PAWG) Wildlife Task Group (subcommittee) will meet in Pinedale, Wyoming, for business meetings. The meetings are open to the public.

DATES: The PAWG Wildlife Task Group will meet October 28, November 9, and December 9, 2004, from 1 p.m. until 4 p.m.

ADDRESSES: The October 28, 2004, meeting of the PAWG Wildlife Task Group will be held in the large conference room of the Bureau of Land Management Office, 432 E. Mill St., Pinedale, WY. The November 9, 2004, meeting will be held in the meeting room of the Pinedale Volunteer Fire Department, 130 S. Fremont Ave., Pinedale, WY; and the December 9, 2004, meeting will be held in the Lovatt Meeting Room of the Sublette County Public Library at 155 S. Tyler Avenue, Pinedale, WY.

FOR FURTHER INFORMATION CONTACT: Steve Belinda, BLM/WildlifeTG Liaison, Bureau of Land Management, Pinedale Field Office, 432 E. Mill St., PO Box 768, Pinedale, WY 82941; 307–367–5323.

SUPPLEMENTARY INFORMATION: The Pinedale Anticline Working Group (PAWG) was authorized and established

with release of the Record of Decision (ROD) for the Pinedale Anticline Oil and Gas Exploration and Development Project on July 27, 2000. The PAWG advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field (PAPA) proceeds for the life of the field.

After the ROD was issued, Interior determined that a Federal Advisory Committees Act (FACA) charter was required for this group. The charter was signed by Secretary of the Interior, Gale Norton, on August 15, 2002, and renewed on August 13, 2004. An announcement of committee initiation and call for nominations was published in the **Federal Register** on February 21, 2003, (68 FR 8522). PAWG members were appointed by Secretary Norton on May 4, 2004.

At their second business meeting, the PAWG established seven resource- or activity-specific Task Groups: Air Quality; Water Resources; Reclamation; Wildlife; Socio-Economic; Cultural/Historic/Visual Resources; and Transportation. Public participation on those Task Groups was solicited through the media, letters, and word-of-mouth. The initial Task Group meeting agenda will include: Review of Task Group charges from the Pinedale Anticline Oil and Gas Exploration and Development Project ROD and the PAWG (developing monitoring plan(s) for the wildlife resources in the Anticline gas field, identifying who will do the monitoring, and identifying who will pay for the monitoring); developing a strategy to accomplish those tasks for recommendation to the PAWG by February, 2005; and selecting Task Group leadership and a proceedings recorder. Subsequent meeting agendas will include developing the monitoring plan(s) and identifying who will do the monitoring and how those costs will be paid. Public comments will be heard just prior to adjournment at each meeting.

Dated: September 30, 2004.

Donald A. Simpson,

Acting State Director.

[FR Doc. 04–22466 Filed 10–5–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–05–1310–DB]

Notice of Meetings of the Pinedale Anticline Working Group's Air Quality Task Group

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group (PAWG) Air Quality Task Group (subcommittee) will meet in Pinedale, Wyoming, for a business meeting. The meeting is open to the public.

DATES: The PAWG Air Quality Task Group will meet November 3, 2004, from 2 p.m. until 6 p.m.

ADDRESSES: The meeting of the PAWG Air Quality Task Group will be held in the meeting room of the Pinedale Volunteer Fire Department at 130 S. Fremont, Pinedale, WY.

FOR FURTHER INFORMATION CONTACT: Susan Caplan, BLM/Air QualityTG Liaison, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Rd., Cheyenne, WY, 82009, or PO Box 1828, Cheyenne, WY, 82003; 307–775–6031.

SUPPLEMENTARY INFORMATION: The Pinedale Anticline Working Group (PAWG) was authorized and established with release of the Record of Decision (ROD) for the Pinedale Anticline Oil and Gas Exploration and Development Project on July 27, 2000. The PAWG advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field (PAPA) proceeds for the life of the field. After the ROD was issued, Interior determined that a Federal Advisory Committees Act (FACA) charter was required for this group. The charter was signed by Secretary of the Interior, Gale Norton, on August 15, 2002, and renewed on August 13, 2004. An announcement of committee initiation and call for nominations was published in the **Federal Register** on February 21, 2003, (68 FR 8522). PAWG members were appointed by Secretary Norton on May 4, 2004.

At their second business meeting, the PAWG established seven resource- or activity-specific Task Groups: Air Quality; Water Resources; Reclamation; Wildlife; Socio-Economic; Cultural/Historic/Visual Resources; and Transportation. Public participation on those Task Groups was solicited through the media, letters, and word-of-mouth. The Task Group meeting agenda will include: review of Task Group charges from the Pinedale Anticline Oil and Gas Exploration and Development Project ROD and the PAWG (developing an air quality monitoring plan for the Pinedale Anticline gas field, identifying who will do the monitoring, and identifying who will pay for the monitoring); developing a strategy to accomplish those tasks for recommendation to the PAWG by February, 2005; selecting Task Group leadership and a proceedings recorder; and setting times, dates, locations, and agendas for subsequent meetings. Public comments will be heard just prior to adjournment of the meeting.

Dated: September 30, 2004.

Donald A. Simpson,

Acting State Director.

[FR Doc. 04–22467 Filed 10–5–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–05–1310–DB]

Notice of Meeting of the Pinedale Anticline Working Group Adaptive Management Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group adaptive management advisory committee will meet in Pinedale, Wyoming, for a business meeting. The meeting is open to the public.

DATES: The Pinedale Anticline Working Group (PAWG) will meet November 4, 2004, beginning at 9 a.m. and continuing until finished, or as late as 5:45 p.m.

ADDRESSES: The PAWG meeting will be held in the meeting room of the Pinedale Volunteer Fire Station, 130 S. Fremont Avenue, Pinedale, WY.

FOR FURTHER INFORMATION CONTACT: Carol Kruse, BLM/PAWG Liaison, Bureau of Land Management, Pinedale Field Office, 432 E. Mill St., P.O. Box

768, Pinedale, WY 82941; 307–367–5352 or *carol_kruse@blm.gov.*

SUPPLEMENTARY INFORMATION: The PAWG was authorized and established with release of the Record of Decision (ROD) for the Pinedale Anticline Oil and Gas Exploration and Development Project on July 27, 2000. The PAWG advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field (PAPA) proceeds for the life of the field.

After the ROD was issued, Interior determined that a Federal Advisory Committees Act (FACA) charter was required for this group. The charter was signed by Secretary of the Interior, Gale Norton, on August 15, 2002, and renewed on August 13, 2004. An announcement of committee initiation and call for nominations was published in the **Federal Register** on February 21, 2003, (68 FR 8522). PAWG members were appointed by Secretary Norton on May 4, 2004.

The PAWG's third meeting discussion topics will include: review of Task Group (resource-specific subcommittees) reports and presentations from wildlife researchers. Public comments will be heard just prior to a noon lunch break and just prior to adjournment.

Dated: September 30, 2004.

Donald A. Simpson,

Acting State Director.

[FR Doc. 04–22468 Filed 10–5–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Public Meeting: Resource Advisory Council to the Boise District, Bureau of Land Management, Department of the Interior

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Boise District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held October 26, 2004, beginning 10:30 a.m. at the Tribal Headquarters of Shoshone-Paiute Native American Indian Tribe, located on the Duck Valley Reservation, Owyhee, Nevada 83705. Public comment periods will be held after topics on the agenda. The meeting will adjourn at 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, Boise District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in southwestern Idaho. At this meeting, the following actions will occur/topics will be discussed:

- Overview of Natural Resource Issues on the Duck Valley Reservation;
- Briefing to RAC on draft alternatives for the Bruneau and Snake River Birds of Prey National Conservation Area Resource Management Plans;
- Update on Juniper Mountain Fuels Project;
- Report on Off-Highway Vehicle Route Designation efforts in the Lower Snake River District;
- Update on BLM-Idaho Organizational Refinement—Introduction of new Owyhee and Bruneau Field Office Managers, and Associate District Manager
- Update: Implementation of LEPA Candidate Conservation Agreement;
- Discussion on RAC's response/comments to Idaho Sage Grouse Habitat Management Plan;
- Hot Topics;
- Subcommittee Reports
  - Off-Highway Vehicles (OHV) and Transportation Management, Resource Management Plans (RAC assistance requested with finalizing draft alternatives), Sage Grouse Habitat Management, and, River and Recreation Management, and;
- Three Field Office Managers and District Fire Manager provide updates on current issues and planned activities in their Field Offices and the District.

Agenda items may change due to changing circumstances. All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below. Expedited publication is requested to give the public adequate notice.

Dated: September 30, 2004.

James H. Johansen,

Acting District Manager.

[FR Doc. 04–22457 Filed 10–5–04; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–01; HAG–04–0235; OR–20301 et al]

Public Land Order No. 7616; Partial Revocation of 7 Secretarial Orders; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes 7 Secretarial Orders insofar as they affect 17,789.94 acres of lands withdrawn for the Bureau of Reclamation's Owyhee Reclamation Project. The lands are no longer needed for the purpose for which they were withdrawn. Of the lands included in the revocation, 7,975.30 acres will remain closed to surface entry and mining until the Bureau of Land Management completes a planning review. The remaining 9,814.64 acres have been conveyed from Federal ownership.

DATES: November 5, 2004.

FOR FURTHER INFORMATION CONTACT: Michael L. Barnes, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, (503) 808–6155.

SUPPLEMENTARY INFORMATION: The lands described in Paragraph (a) will remain closed to surface entry and mining until a planning analysis and review is completed to determine if any of the lands need special designation or protection. If such lands are deemed appropriate for surface entry, including entry under the mining laws, a subsequent Notice of Opening will be published in the **Federal Register** to address such a finding and potentially open such lands to entry. This is a record clearing action only for the lands described in Paragraph (b) which have been conveyed from Federal ownership.

Order

By virtue of the authority vested in the Secretary of Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

The Secretarial Orders dated September 2, 1914, November 4, 1914,

March 17, 1916, February 5, 1923, March 28, 1925, February 18, 1937, and April 30, 1945, which withdrew public lands for the Bureau of Reclamation's Owyhee Reclamation Project, are hereby revoked insofar as they affect the following described lands:

Willamette Meridian

(a) *Federal Lands*

T. 16 S., R. 47 E.,
Sec. 18, SW¼NE¼ (except for a strip of land 150 feet on each side of the centerline of the canal).

T. 17 S., R. 46 E.,
Sec. 26, NW¼SE¼ (except for a strip of land 150 feet each side of the centerline of the canal).

T. 18 S., R. 45 E.,
Sec. 10, S½NW¼ (except for a strip of land 150 feet each side of the centerline of the canal).

T. 18 S., R. 46 E.,
Sec. 9, E½NW¼ and NE¼SE¼.

T. 19 S., R. 46 E.,
Sec. 2, SW¼NE¼ and W½SE¼;
Sec. 15, SW¼NE¼ (except for a strip of land 150 feet each side of the centerline of the canal);
Sec. 32, NE¼SE¼ and N½NW¼SE¼ (except for a strip of land 150 feet each side of the centerline of the canal);
Sec. 33, NW¼, that portion lying north of the irrigation canal.

T. 20 S., R. 45 E.,
Sec. 10, E½NW¼SE¼;
Sec. 12, S½NW¼, NW¼SE¼, and SE¼SE¼ (except for a strip of land 150 feet each side of the centerline of the canal).
Sec. 35, NE¼NE¼SE¼NE¼.

T. 20 S., R. 46 E.,
Sec. 5, lots 1 and 2, SW¼NE¼, S½SW¼ north of canal, and NE¼SE¼ west of canal;
Sec. 6, SE¼SW¼ and SW¼SE¼;
Sec. 20, S½SW¼NE¼.

T. 21 S., R. 45 E.,
Sec. 13, W½SW¼SE¼;
Sec. 14, NW¼NW¼, NE¼SW¼, N½SE¼ and SW¼SE¼ (except for a strip of land 150 feet each side of the centerline of the canal);
Sec. 23, SE¼NE¼, and E½SE¼ (except for a strip of land 150 feet each side of the centerline of the canal);
Sec. 24, W½NW¼NE¼, SW¼NE¼, W½SE¼NE¼, N½NW¼, SW¼NW¼, and S½SE¼NW¼ (except for a strip of land 150 feet each side of the centerline of the canal);
Sec. 26, N½NE¼, W½SW¼NE¼, SE¼NE¼, NE¼NE¼SE¼, S½NE¼SE¼, W½NW¼SE¼, SE¼NW¼SE¼, and S½SE¼ (except for a strip of land 150 feet each side of the centerline);
Sec. 34, SE¼;
Sec. 35, E½ and SW¼, (except for a strip of land 150 feet each side of the centerline of the canal).

T. 21 S., R. 46 E.,
Sec. 7, S½S½NE¼;
Sec. 8, SW¼NW¼ and NW¼SW¼;
Sec. 16, S½S½;
Sec. 17, SW¼SW¼;
Sec. 18, E½SE¼ (except for a strip of land 150 feet each side of the centerline of the canal);
Sec. 19, lot 3 and E½NE¼ (except for a strip of land 150 feet each side of the centerline of the canal);
Sec. 20, W½NW¼ (except for a strip of land 150 feet each side of the centerline of the canal);
Sec. 22, lot 2 and S½SW¼;
Sec. 27, NE¼NW¼ and SW¼NW¼;
Sec. 28, SE¼SE¼.

T. 22 S., R. 45 E.,
Sec. 2, lots 1, 2, and 3, S½N½, N½N½SW¼, SE¼NE¼SW¼, SW¼NW¼SW¼, W½SW¼SW¼, SE¼SW¼SW¼, NE¼SE¼SW¼, S½SE¼SW¼, and SE¼ (except for a strip of land 150 feet each side of the centerlines of the canal and Tunnels No. 1 and 5);
Sec. 3, lots 1, 2, 3, 6, 7, 9, 10 and 15, S½NE¼, and SE¼ (except for a strip of land 150 feet each side of the centerline of the canal and Tunnel No.1);
Sec. 4, lot 1;
Sec. 9, SE¼;
Sec. 10, lots 1, 2, NE¼, S½NW¼, and S½ (except for a strip of land 150 feet each side of the centerline of Tunnel No. 1);
Sec. 17, W½NW¼;
Sec. 18, lots 1 and 6.

T. 22 S., R. 46 E.,
Sec. 9, NE¼SW¼ and SW¼SW¼ (except for a strip of land 150 feet each side of the centerline of Tunnel No. 5);
Sec. 16;
Sec. 21, NE¼NE¼ (except for a strip of land 150 feet each side of the centerline of the canal);
Sec. 22, W½SW¼NW¼, NE¼SW¼, W½NW¼SW¼, SE¼NW¼SW¼, SW¼SW¼, N½SE¼SW¼, and SE¼SE¼SW¼ (except for a strip of land 150 feet each side of the centerline of the canal);
Sec. 26, N½SW¼ (except for a strip of land 150 feet each side of the centerline of the canal);
Sec. 27, SW¼NE¼, NE¼SE¼, and S½NW¼SE¼ (except for a strip of land 150 feet each side of the centerline of the canal).

T. 23 S., R. 46 E.,
Sec. 3, lot 1, W½W½SW¼NE¼, SE¼NW¼SW¼NE¼, NE¼SW¼SW¼NE¼, SE¼NW¼, E½SW¼, W½W½W½SE¼, SW¼NE¼NW¼SE¼, SE¼NW¼NW¼SE¼, E½SW¼NW¼SE¼, W½SE¼NW¼SE¼, and E½NW¼SW¼SE¼;
Sec. 10, W½NW¼NW¼NE¼, SW¼NW¼NE¼, S½SE¼NW¼NE¼, E½NW¼ and S½SE¼NE¼ (except for a strip of land 150 feet each side of the centerline of the canal);
Sec. 11, E½SW¼ (except for a strip of land 150 feet each side of the centerline of the canal);
Sec. 14, W½NW¼NE¼, SE¼NW¼NE¼, and NE¼NW¼ (except for a strip of land 150 feet each side of the centerline of the canal).

T. 27 S., R. 43 E.,
Sec. 5, lots 12, 14, 21, 23, and 26, and E½SW¼;
Sec. 6, lots 4, 12, 14, 15, 17, 24, 25, 27, 29, 38, 41, 49, 50, and 51;
Sec. 7, lots 1, 2, 9 thru 23, inclusive, and E½E½;
Sec. 18, lots 1 thru 11, and 14 thru 18, inclusive, and E½NE¼;
Sec. 19, lot 5.

The areas described aggregate 7,975.30 acres in Malheur County.

(b) *Non-Federal Lands*

T. 18 S., R. 45 E.,
Sec. 12, NW¼NE¼ and NE¼NW¼.

T. 18 S., R. 46 E.,
Sec. 4, SW¼SW¼;
Sec. 6, SE¼SE¼;
Sec. 30, W½W½SE¼.

T. 19 S., R. 46 E.,
Sec. 4, lots 1, 2 and 3, SW¼NE¼, SE¼NW¼, and NW¼SW¼;
Sec. 5, lot 2, SW¼NE¼ and NE¼SE¼;
Sec. 28, W½SW¼NW¼.

T. 20 S., R. 45 E.,
Sec. 9.

T. 21 S., R. 45 E.,
Sec. 1, SW¼NW¼ and S½;
Sec. 2, lots 2 and 3, S½N½, and SE¼;
Sec. 11, N½NE¼, SE¼NW¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 12, NW¼NW¼;
Sec. 26, E½SW¼NW¼, W½SE¼NW¼, and E½NW¼SW¼;
Sec. 35, SW¼NW¼.

T. 21 S., R. 46 E.,
Sec. 33, NE¼NE¼ and E½NW¼NE¼.

T. 22 S., R. 45 E.,
Sec. 7, lot 10;
Sec. 9, lots 4 and 5;
Sec. 18, lot 2 and E½NW¼NE¼.

T. 22 S., R. 46 E.,
Sec. 9, N½SE¼;
Sec. 10, NW¼SW¼;
Sec. 12, N½NE¼;
Sec. 14, NW¼NW¼;
Sec. 15, N½NE¼, NE¼NW¼, and NW¼SE¼;
Sec. 22, NE¼NE¼, S½NE¼, SE¼NW¼, and SE¼;
Sec. 23, SE¼NE¼, W½NW¼, and SE¼;
Sec. 24, W½W½ and SE¼;
Sec. 25, NE¼, N½NW¼, and SW¼;
Sec. 26, SE¼SW¼;
Sec. 27, N½NE¼, SE¼NE¼, and NW¼.
Sec. 35, S½NE¼, E½NW¼, and N½SE¼.

T. 22 S., R. 47 E.,
Sec. 7, lots 1 to 4, inclusive, and W½W½;
Sec. 30, lots 3 and 4, and W½SW¼;
Sec. 31, lot 1 and NW¼NW¼.

T. 23 S., R. 46 E.,
Sec. 1, lot 4, SW¼NW¼, and SW¼SE¼NW¼;
Sec. 2, lots 1 to 4, inclusive, S½N½, and SW¼;
Sec. 3, NE¼SW¼NE¼, NE¼NW¼SW¼NE¼, SE¼SW¼SW¼NE¼, SE¼SW¼NE¼, SE¼NE¼, NE¼SE¼, N½NE¼NW¼SE¼, SE¼NE¼NW¼SE¼, NE¼NW¼NW¼SE¼, E½SE¼NW¼SE¼, NE¼SW¼SE¼, E½SW¼SW¼SE¼, SE¼SW¼SE¼, and SE¼SE¼;
Sec. 10, NE¼NE¼, NE¼NW¼NE¼, E½NW¼NW¼NE¼, and N½SE¼NW¼NE¼;

Sec. 11, S½NE¼, NW¼, and SE¼;
Sec. 12, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 13, W½E½ and E½W½.

The areas described aggregate 9,814.64 acres in Malheur County.

Dated: September 14, 2004.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 04–22391 Filed 10–5–04; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–060–1430–ET; UTU–75392]

Public Land Order No. 7618; Withdrawal of Public Lands within Segments of the Colorado, Dolores, and Green River Corridors; Utah

AGENCY: Bureau of Land Management.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 111,895 acres of public lands from location and entry under the United States mining laws for a period of 20 years for the Bureau of Land Management to protect the recreational, scenic, cultural, riparian, and fish and wildlife values of the Colorado, Dolores, and Green River corridors.

EFFECTIVE DATES: October 6, 2004.

FOR FURTHER INFORMATION CONTACT: Rhonda Flynn, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155, 801–539–4132.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), to protect the recreational, scenic, cultural, riparian, and fish and wildlife values of the Colorado, Dolores, and Green River corridors:

Salt Lake Meridian

(a) *Colorado River*

T. 21 S., R. 24 E.,
Sec. 22, lots 2, 3, 9, and 10, SW¼NW¼, and NW¼SW¼;
Sec. 23, lots 8 to 12, inclusive, and N½NE¼NW¼;
Sec. 26, lots 10 to 15, inclusive, and SW¼NE¼;
Sec. 27, lot 6 and SE¼NW¼;
Sec. 35, lots 9 to 14, inclusive.

T. 22 S., R. 24 E.,
Sec. 2, lots 2 to 6, inclusive, and SE¼NW¼;
Sec. 3, lots 1, 2, and 3, and lots 5 to 11, inclusive;
Sec. 10, lots 1 to 5, inclusive, SE¼NW¼, and NE¼SE¼;
Sec. 11, lots 1 to 9, inclusive, and NW¼SW¼;
Sec. 14, lot 1, NW¼NE¼, and NE¼NW¼;
Sec. 15, lots 1 to 11, inclusive;
Sec. 16, lot 1 and NE¼SE¼;
Sec. 21, lots 1 to 9, inclusive, and NE¼SW¼;
Sec. 22, lots 1 and 2;
Sec. 33, SW¼SW¼.

T. 23 S., R. 23 E.,
Sec. 12, SE¼SW¼ and S½SE¼;
Sec. 13, lots 1 to 8, inclusive, NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, and N½SE¼;
Sec. 14, lots 1 to 7, inclusive, N½NE¼, SE¼NW¼, E½SW¼, and SE¼SE¼;
Sec. 23, lots 1 to 6, inclusive, E½NW¼, SW¼NE¼, and NW¼SE¼;
Sec. 24, lots 1 to 9, inclusive, S½N½, and E½SW¼;
Sec. 25, lots 1 to 10, inclusive, SW¼NE¼, NE¼NW¼, W½SW¼, and E½SE¼;
Sec. 26, E½NE¼ and NE¼SE¼;
Sec. 34, SE¼NE¼, S½SW¼, and SE¼;
Sec. 35, lots 1, 2, and 3, S½N½, N½S½, and S½SW¼;
Sec. 36, lots 1 to 10, inclusive, E½NE¼, NE¼NW¼, SW¼NW¼, N½SE¼, and SW¼SE¼.

T. 23 S., R. 24 E.,
Sec. 5, lots 1 to 4, inclusive, lots 6 to 11, inclusive, SE¼NE¼, NE¼SE¼, and E½SW¼;
Sec. 8, lots 1, 2, 4, 5, and 10;
Sec. 17, lots 1 to 4, inclusive, S½N½, N½S½, and S½SE¼;
Sec. 18, lots 1 to 10, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 19, lots 1 and 2, NE¼, and E½NW¼;
Sec. 20, N½NE¼, and SE¼NE¼;
Sec. 30, lot 4;
Sec. 31, lots 1 to 4, inclusive, and E½W½.

T. 24 S., R. 22 E.,
Sec. 25, lots 1 to 4, inclusive, NE¼, S½NW¼, and N½SW¼;
Sec. 26, lots 1 to 6, inclusive;
Sec. 27, lots 1 to 8, inclusive, and N½SW¼;
Sec. 28, lots 1 and 2, and SW¼SE¼;
Sec. 33, lots 1 to 11, inclusive, N½NW¼, and SE¼SW¼;
Sec. 34, N½N½;
Sec. 35, S½S½S½NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, and SE¼;
Sec. 36, lots 1 and 2.

T. 24 S., R. 23 E.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 2 to 5 inclusive, and lots 8 and 9;
Sec. 3, lots 1 to 7, inclusive, S½N½, SW¼, and NW¼SE¼;
Sec. 4, lots 1, 2, 6, and 7, S½NE¼, E½SW¼, and SE¼;
Sec. 5, lots 6 and 7, and W½SE¼;
Sec. 8, lots 1 to 4, inclusive, E½SW¼, and W½E½;
Sec. 9, lots 1 to 6, inclusive, NE¼, NE¼NW¼, SW¼, and NW¼SE¼;
Sec. 10, lots 1, 3, 4 and 8, SE¼NE¼, S½SE¼, and NW¼NW¼;
Sec. 11, N½, NE¼SW¼, S½SW¼, and SE¼;
Sec. 12, NW¼NE¼ and W½;
Sec. 13, N½NW¼, SW¼NW¼, and NW¼SW¼;
Sec. 14, N½ and N½S½;
Sec. 15, NE¼, NE¼NW¼, S½NW¼, and S½;
Sec. 17, lots 1 to 6, inclusive, W½NE¼, E½NW¼, SW¼NW¼, and SW¼;
Sec. 18, lots 2, 3, and 4, S½NE¼, SE¼NW¼, E½SW¼, and SE¼.
Sec. 19, lots 1 to 7, inclusive, NE¼, E½W½, and N½SE¼;
Sec. 20, lots 1 to 8, inclusive, lots 12, 13, and 14, and N½NW¼;
Sec. 21, NW¼NE¼, W½, and W½SE¼;
Sec. 28, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 29, lot 1, NW¼NE¼, S½NE¼, W½, and SE¼;
Sec. 30, lots 1 to 9, inclusive, lots 11 and 12, SE¼NE¼, NE¼SE¼, and S½SE¼;
Sec. 31, lots 1, 2 and 3, N½NE¼, SW¼NE¼, E½NW¼, NE¼SW¼, and NW¼SE¼.

T. 25 S., R. 21 E.,
Sec. 31, lots 4, 5, and 6, SE¼SW¼, and NW¼SE¼;
Sec. 33, NE¼NE¼;
Sec. 34, lots 6 to 9, inclusive, and SE¼SW¼.

T. 25 S., R 22 E.,
Sec. 3, S½SW¼ and W½SE¼;
Sec. 4, lots 4 and 5, W½SW¼, SE¼SW¼, and S½SE¼;
Sec. 5, lots 1, 2, and 3;
Sec. 8, lots 1 and 2;
Sec. 9, lots 1 to 4, inclusive, and N½NW¼;
Sec. 10, lots 1 to 7, inclusive, and W½E½;
Sec. 15, lot 1, W½NE¼, NE¼NW¼, and S½NW¼;
Sec. 16, lots 1 to 4, inclusive, and N½SE¼;
Sec. 17, lots 1 to 4, inclusive;
Sec. 19, lots 1 to 4, inclusive, SE¼SW¼, and NE¼SE¼;
Sec. 20, lot 1, N½NE¼, NE¼NW¼, and SW¼NW¼;
Sec. 21, NW¼NW¼;
Sec. 30, lots 1 and 2.

T. 26 S., R 20 E.,
Sec. 1, lot 1, lots 8 to 14, inclusive, SW¼NE¼, S½NW¼, and N½SW¼;
Sec. 12, lots 1, 2, and 3, SW¼NE¼, SW¼SE¼, and E½SE¼;
Sec. 13, lots 1 and 2, and N½NE¼.

T. 26 S., R 21 E.,
Sec. 3, lot 2, lots 7 to 12, inclusive, and SW¼SE¼;
Sec. 5, lots 3 to 6, inclusive, lots 9 to 12, inclusive, SW¼NE¼, SE¼NW¼, and E½SW¼;
Sec. 6, lots 1 to 13, inclusive, SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼, and SE¼SE¼;
Sec. 7, lots 1 to 7, inclusive, NE¼, E½NW¼, N½SE¼, and SE¼SE¼;
Sec. 8, lots 1 to 8, inclusive, and E½W½;
Sec. 9, SE¼SE¼;
Sec. 10, lots 1 to 7, inclusive, lots 9, 10, and 11, NE¼SE¼, and SW¼SE¼;
Sec. 11, lots 4 and 5;
Sec. 15, E½W½ and SW¼SW¼;
Sec. 16, lot 1;

Sec. 17, lots 1 to 9, inclusive, E½NW¼, and SE¼SE¼;
Sec. 18, lots 1 to 8, inclusive, E½E½, and SW¼NE¼;
Sec. 19, lots 1, 2, 3, and 5;
Sec. 20, lots 1 to 6, inclusive, and SE¼NW¼;
Sec. 21, lots 1 to 8, inclusive, NW¼NW¼, and SE¼NE¼.

The area described contains approximately 28,335 acres in Grand County.

(b) *Dolores River* (including the river bottom)

T. 23 S., R. 24 E.,
Sec. 1, S½S½;
Sec. 2, lots 5 and 6, SW¼SW¼, and SE¼SE¼;
Sec. 9, lots 1 to 12, inclusive, NE¼NW¼, and S½NE¼;
Sec. 10, lots 1 to 11, inclusive, NE¼NE¼, SW¼NE¼, NE¼SW¼, and SE¼SE¼;
Sec. 11, lots 1 to 8, inclusive, S½NE¼, SE¼NW¼, and S½;
Sec. 12, lots 1 to 13, inclusive, N½NE¼, SW¼NW¼, and SW¼;
Sec. 13, lots 1 to 5, inclusive, W½NE¼, N½NW¼, and W½SE¼;
Sec. 14, N½;
Sec. 15, lots 1 and 2, NE¼, E½NW¼, SW¼, and NW¼SE¼;
Sec. 16, lots 5, 6, 10, 11 and 12, NW¼SW¼, and S½SE¼;
Sec. 21, NW¼NE¼, N½NW¼, SW¼NW¼, and NW¼SW¼;
Sec. 22, W½NE¼, NW¼, and NE¼SW¼.

T. 23 S., R.25 E.,
Sec. 7, lots 3 and 4, E½SW¼, and SW¼SE¼;
Sec. 16, SW¼;
Sec. 17, lots 1 to 5, inclusive, and lot 9;
Sec. 18, lots 3 to 9, inclusive, NW¼NE¼, S½NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 19, lot 1;
Sec. 20, lots 1, 2, and 6, and SE¼NE¼;
Sec. 21, lots 1 to 11, inclusive, E½NE¼, and SW¼;
Sec. 22, lots 1 to 7, inclusive, and E½SE¼;
Sec. 26, W½;
Sec. 27, lots 1 to 8, inclusive, NE¼NE¼, S½NE¼, W½W½, and SE¼;
Sec. 28, NE¼, NE¼NW¼, and E½SE¼;
Sec. 33, E½;
Sec. 34, lots 1 to 8, inclusive, NE¼, SE¼NW¼, E½SW¼, and SE¼.

T. 23 S., R. 26 E.,
Sec. 31, SE¼;
Sec. 32, S½N½ and S½;
Sec. 33, lots 3 and 4, and W½SW¼.

T. 24 S., R. 25 E.,
Sec. 1, lots 6, 7, and 8, and NW¼SW¼;
Sec. 2, lots 3 to 12, inclusive, S½SW¼, and SW¼SE¼;
Sec. 3, lots 1 to 5, inclusive, SE¼NW¼, SW¼NE¼, and SE¼;
Sec. 9, NE¼SE¼ and S½SE¼;
Sec. 10, NE¼, SE¼NW¼, and S½;
Sec. 11, lot 1, NW¼NE¼, S½NE¼, N½NW¼, N½SE¼, SE¼SE¼, and SW¼SW¼;
Sec. 12, lots 1 to 15, inclusive, NE¼NW¼, S½SW¼, and SW¼SE¼;
Sec. 14, W½NW¼;
Sec. 15, NE¼ and E½NW¼.

T. 24 S., R.26 E.,
Sec. 4, lots 1 to 5, inclusive, SW¼NW¼, and W½SW¼;
Sec. 5, lots 1 to 4, inclusive, S½N½, NE¼SW¼, and SE¼;
Sec. 6, lots 1, 2, and 3, S½N½, N½S½, S½SW¼, and SW¼SE¼;
Sec. 7, W½NE¼, SE¼NE¼, NW¼, and SE¼;
Sec. 8, SW¼NW¼ and W½SW¼;
Sec. 17, W½W½;
Sec. 18, E½E½;
Sec. 19, E½NE¼;
Sec. 20, W½;
Sec. 29, E½W½ and W½E½.

The area described contains approximately 16,445 acres in Grand County.

(c) *Green River* (including the river bottom in non-navigable sections)

T. 12 S., R. 17 E., unsurveyed, except as noted
Sec. 24, SE¼, surveyed;
Sec. 25 (A);
Sec. 26 (A);
Sec. 27 (A), excluding W½W½;
Sec. 34 (A), excluding W½W½;
Sec. 35 (B);
Sec. 36 (B).

T. 13 S., R. 17 E., unsurveyed, except as noted
Sec. 1 (B);
Sec. 2 (A);
Sec. 3, excluding W½W½;
Sec. 10 (A), excluding N½N½, S½NW¼, and W½SW¼;
Sec. 11 (A), excluding NW¼NW¼;
Sec. 12 (B);
Sec. 15 (A), excluding NW¼NW¼;
Sec. 16, E½SE¼, surveyed;
Sec. 21, E½NE¼;
Sec. 22 (A), excluding SW¼SW¼;
Sec. 23 (B);
Sec. 26 (B);
Sec. 27, E½W½ and E½;
Sec. 33 (A), excluding W½;
Sec. 34 (A);
Sec. 35 (B).

T. 14 S., R. 17 E., unsurveyed,
Sec. 3 (B);
Sec. 4 (A), excluding W½;
Sec. 9 (A), excluding NW¼, N½SW¼, and SW¼SW¼;
Sec. 10 (B);
Sec. 16 (A);
Sec. 17 (A), excluding W½, N½NE¼, and SW¼NE¼;
Sec. 20 (A), excluding W½;
Sec. 21 (B);
Sec. 28 (B);
Sec. 29 (A), excluding N½NW¼;
Sec. 32 (A).

T. 15 S., R. 16 E., unsurveyed,
Sec. 1, E½.

T. 15 S., R. 17 E.,
Sec. 5 (A), unsurveyed;
Sec. 6, unsurveyed;
Sec. 7, lot 4, N½NE¼, SW¼NE¼, W½SE¼, and SE¼SE¼;
Sec. 8, lot 5 and N½NW¼;
Sec. 16 (B), unsurveyed;
Sec. 17 (A), unsurveyed;
Sec. 18, N½;
Sec. 20, E½E½;
Sec. 21 (A);
Sec. 28 (A), excluding SW¼NW¼ and NW¼SW¼;
Sec. 33 (A).

T. 16 S., R. 17 E., unsurveyed, except as noted
Sec. 3 (B);
Sec. 4 (A);
Sec. 5, SE¼;
Sec. 8, NE¼;
Sec. 9 (A), excluding SW¼;
Sec. 10 (B);
Sec. 16, lots 1 to 4, inclusive, and W½E½, surveyed;
Sec. 21 (A), excluding W½;
Sec. 22 (B);
Sec. 27 (A);
Sec. 28, E½E½;
Sec. 33 (A), excluding W½, and W½E½;
Sec. 34 (B);
Sec. 34 (C).

T. 17 S., R. 16 E.,
Sec. 21, SE¼;
Sec. 22, SW¼;
Sec. 26, N½S½ and S½SE¼;
Sec. 27, N½, N½S½, S½SW¼, and SW¼SE¼;
Sec. 28, E½;
Sec. 34, N½N½;
Sec. 35, E½W½ and E½;
Sec. 36, SE¼.

T. 17 S., R. 17 E.,
Sec. 3, lot 5;
Sec. 4, lots 1, 2, 5, 6, 9, 10, and 11;
Sec. 9, lots 1, 2, 4, and 5, SW¼NE¼, NE¼SW¼, S½SW¼, and W½SE¼;
Sec. 16, lots 2 to 5, inclusive, lots 10 and 11, and NW¼NW¼;
Sec. 17, SE¼;
Sec. 19, lots 3 and 6, S½NE¼, and NW¼SE¼;
Sec. 20, lots 1, 2, 3, 6, 7, 8, 11, and 12, NW¼NE¼, and NW¼;
Sec. 21, lot 3;
Sec. 29, lots 2 and 5;
Sec. 30, lots 1, 4, and 7, SE¼NE¼, and W½E½;
Sec. 31, lot 2, and lots 4 to 8, inclusive, W½NE¼, E½NW¼, E½SW¼, W½SE¼, and NE¼SE¼;
Sec. 32, lots 3, 4, 7, 8, and 9.

T. 18 S., R. 16 E.,
Sec. 1, lots 1, 2, and 3, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 12, lots 1, 2, and 3, W½NE¼, E½NW¼, NE¼SW¼, NW¼SE¼, and S½SE¼;
Sec. 25, lots 1, 2, and 3, S½NE¼, E½SW¼, and W½SE¼;
Sec. 36, lots 1 to 4, inclusive, W½E½, E½W½, and SE¼SE¼.

T. 18 S., R. 17 E.,
Sec. 6, lots 3 to 6, inclusive, and lots 9 and 10;
Sec. 7, lots 5, 6, and 7;
Sec. 18, lots 2, 3, 4, 6, 9, 12, and 13, NE¼NW¼, SW¼NE¼, NW¼SE¼, and SE¼SW¼;
Sec. 19, lots 1 to 10, inclusive, E½NW¼, E½SW¼, and W½SE¼;
Sec. 20, lots 1 and 2, W½NW¼, excluding Uintah Reservation, SE¼NW¼, excluding Uintah Reservation, E½SW¼, and SW¼SE¼;
Sec. 29, lots 1 to 7, inclusive, E½, NE¼NW¼, and SE¼SW¼;
Sec. 30, lots 1 to 12, inclusive, NW¼NE¼, S½NE¼, E½NW¼, and NE¼SE¼;
Sec. 31, lots 1 to 7, inclusive, S½NE¼, E½NW¼, NE¼SW¼, and SE¼;
Sec. 32, NW¼NW¼, S½NW¼, N½SW¼, and NW¼SE¼.

T. 19 S., R.16 E.,
Sec. 1, lots 1 to 17, inclusive, SW¼NW¼, SE¼NE¼, and SE¼;
Sec. 2, lots 9 to 15, inclusive, N½S½, and SW¼SW¼;
Sec. 3, SE¼SE¼;
Sec. 10, lots 1 to 7, inclusive, W½NE¼, W½, and NW¼SE¼;
Sec. 11, lots 1 to 4, inclusive, N½NE¼, SW¼NE¼, SE¼NW¼, and W½SW¼;
Sec. 12, N½NW¼;
Sec. 14, lots 1 to 6, inclusive, E½W½, and N½SE¼;
Sec. 15, lots 1 to 5, inclusive, NE¼SE¼, W½E½, and S½SW¼;
Sec. 21, NE¼ and S½;
Sec. 22, lots 1 to 13, inclusive, S½NE¼, NW¼NW¼, SW¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 23, N½NW¼;
Sec. 26, lots 1 to 5, inclusive, NW¼NW¼, SE¼NW¼, and E½SW¼;
Sec. 27, lots 1 to 9, inclusive, NE¼NE¼, NW¼NW¼, S½NW¼, NE¼SW¼, S½SW¼, and NW¼SE¼;
Sec. 28, NE¼ and N½NW¼;
Sec. 34, lots 1 to 12, inclusive, S½NE¼, W½NW¼, and SE¼;
Sec. 35, NW¼ and S½.
T. 20 S., R. 16 E.,
Sec. 3, lots 1 to 5, inclusive, and lots 8, 9, 10, and 12, SE¼NE¼, E½SE¼, SW¼NW¼, and NW¼SW¼;
Sec. 4, SE¼SW¼ and S½SE¼;
Sec. 10, lots 1, 6, and 8, SW¼NE¼, E½NE¼, and E½SW¼;
Sec. 17, lots 1, 2, and 3.
T. 21 S., R. 16 E., Sec. 27, lots 5, 6, and 8, NE¼NW¼, S½NW¼, and SW¼SE¼;
Sec. 28, lot 2;
Sec. 33, lot 1, SE¼NE¼, and NE¼SE¼;
Sec. 34, lots 5 and 6, SW¼NW¼, N½SW¼, and SW¼SE¼;
Sec. 35, W½SW¼.
T. 22 S., R. 16 E.,
Sec. 3, lots 13, 18, 22, and 23;
Sec. 5, lots 13 and 18;
Sec. 9, SW¼SW¼;
Sec. 16, lots 1, 5, 8, 9, and 10;
Sec. 17, lots 1, 2, and 3, and S½NE¼;
Sec. 21, lots 1, 4, 5, 8, and 9, E½E½, and SW¼SW¼;
Sec. 25, W½SW¼;
Sec. 26, S½;
Sec. 27, lots 1 to 10, inclusive, lot 13, and SW¼NW¼;
Sec. 28, lots 1, 2, 4, 5, 8, and 11, E½NE¼, NE¼SE¼, and W½W½;
Sec. 33, lots 1 and 2, N½NW¼;
Sec. 34, lots 1, 5, 6, 7, and 10, and SE¼SE¼;
Sec. 35, W½NW¼.
T. 23 S., R. 16 E.,
Sec. 3, lots 2, 4, 5, 6, lots 8 to 12, inclusive, lot 14, NE¼SE¼, SW¼NW¼, W½SW¼, and SE¼SW¼;
Sec. 10, N½N½;
Sec. 11, lots 1, 3, 6, 8, 9, 10, 11 and 14, and NW¼NW¼;
Sec. 12, NW¼SW¼ and SE¼SW¼;
Sec. 13, lots 6, 7, and 10, NW¼NE¼, and E½SE¼;
Sec. 14, N½NE¼ and NE¼NW¼;
Sec. 23, lots 1, 2, and 3, NE¼NE¼, SW¼NE¼, SE¼NW¼, and E½SW¼;
Sec. 24, lots 1, 5, and 6, E½NE¼, NE¼SW¼, and NW¼SE¼;
Sec. 25, lot 8;
Sec. 26, SW¼NE¼.
T. 24 S., R. 16 E.,
Sec. 1, lots 5 to 8, inclusive, and SE¼NE¼;
Sec. 11, SE¼SE¼;
Sec. 12, lots 1 to 8, inclusive, SE¼NE¼, SW¼NW¼, and NW¼SE¼;
Sec. 13, lots 1 to 8, inclusive, NW¼SE¼, and SE¼SE¼;
Sec. 14, E½NE¼;
Sec. 23, lots 1 to 6, inclusive, NW¼NE¼, SE¼NW¼, E½SW¼, and SW¼SE¼;
Sec. 24, lots 1 to 10, inclusive, and NW¼SE¼;
Sec. 25, lots 1 to 7, inclusive.
T. 24 S., R. 17 E.,
Sec. 6, lots 1 to 14, inclusive, and S½SE¼;
Sec. 18, lot 4 and SE¼SW¼;
Sec. 19, lots 1 to 9, inclusive, lots 11, 12, and 13, E½NE¼, and NE¼SE¼;
Sec. 30, lots 1 to 5, inclusive, NW¼NE¼, SE¼NW¼, and E½SW¼;
Sec. 31, lots 1 to 13, inclusive.
T. 25 S., R. 16 E.,
Sec. 1, lots 1, 2, and 3, lots 5 to 9, inclusive, SE¼NW¼, and NE¼SW¼.
T. 25 S., R. 17 E., unsurveyed, except as noted
Sec. 5;
Sec. 6, excluding S½SW¼;
Sec. 7, NE¼;
Secs. 8, 9, 16, and 17;
Sec. 19, E½;
Secs. 20 to 23, inclusive, and secs. 26 and 27;
Sec. 28, except SW¼SW¼;
Sec. 29, except S½S½;
Sec. 30, NE¼ and N½SE¼;
Sec. 31, SE¼;
Sec. 32, lots 1, 2, and 3, S½SW¼, and NW¼SE¼, surveyed;
Secs. 33, 34, and 35.
T. 25 S., R. 17½ E., unsurveyed, except as noted
Sec. 3, excluding future lots 1 to 10, inclusive, S½NE¼, and SE¼;
Sec. 4, excluding future lots 1, 2, 3, 6, 7, and 8;
Secs. 5 and 6;
Sec. 9 (A);
Sec. 9 (B);
Sec. 10, W½;
Sec. 13, SW¼ and SW¼SE¼;
Sec. 14, S½;
Sec. 15, W½W½;
Secs. 16, 20, and 21;
Sec. 22, excluding NE¼;
Sec. 23 (A);
Sec. 23 (B);
Sec. 24, excluding E½NE¼;
Secs. 25 and 27;
Sec. 28 (A);
Sec. 28 (B);
Secs. 29, 33, and 34;
Sec. 35, except SE¼SE¼;
Sec. 36, lots 1, 2, and 3, N½NE¼, SW¼NE¼, and N½SW¼, surveyed.
T. 26 S., R. 16 E., unsurveyed,
Sec. 23, S½SE¼;
Sec. 24, S½;
Sec. 25, N½N½ and S½NW¼;
Sec. 26, NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 27, S½SE¼;
Sec. 33, SE¼;
Sec. 34.
T. 26 S R. 17 E., unsurveyed, except as noted
Secs. 2, 3, and 4;
Sec. 5, E½;
Sec. 10;
Sec. 11, excluding SW¼;
Sec. 12;
Sec. 13, excluding N½NW¼, SW¼NW¼, and W½SW¼;
Sec. 15, W½;
Sec. 16, N½NE¼, SE¼NE¼, NE¼NW¼, SE¼, NE¼SE¼SW¼, and S½SE¼SW¼, surveyed;
Sec. 17, S½S½;
Sec. 18, S½S½;
Secs. 19 and 20;
Sec. 21, N½;
Sec. 23, E½SE¼;
Sec. 24, excluding W½NW¼;
Sec. 25;
Sec. 26, excluding NW¼NE¼, and N½NW¼;
Sec. 27, excluding N½N½;
Secs. 34 and 35.
T. 26 S., R. 17½ E., unsurveyed,
Sec. 1, except N½N½;
Sec. 2, except E½NE¼;
Secs. 3, 4, 11, 12, 13, 23, and 24;
Sec. 25, NW¼;
Secs. 26, 27, and 28;
Sec. 34, excluding Canyonlands National Park;
Sec. 35, N½N½ and N½S½N½.

The area described contains approximately 67,115 acres in Carbon, Grand, and Emery Counties.

The total areas described in (a), (b), and (c) aggregate approximately 111,895 acres.

2. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: September 11, 2004.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 04–22390 Filed 10–5–04; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Meeting of the Yakima River Basin Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: As required by the Federal Advisory Committee Act, notice is hereby given that the Yakima River Basin Conservation Advisory Group,

Yakima River Basin Water Enhancement Project, Yakima, Washington, established by the Secretary of the Interior, will hold a public meeting. The purpose of the Conservation Advisory Group is to provide technical advice and counsel to the Secretary of the Interior and Washington State on the structure, implementation, and oversight of the Yakima River Basin Water Conservation Program.

DATES: Tuesday, October 26, 2004, 9 a.m.–4 p.m.

ADDRESSES: Bureau of Reclamation Office, 1917 Marsh Road, Yakima, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. James Esget, Manager, Yakima River Basin Water Enhancement Project, 1917 Marsh Road, Yakima, Washington, 98901; 509–575–5848, extension 267.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to review the option of using the acquired habitat lands to mitigate the impacts that occur from the planned conservation measures and develop recommendations. This meeting is open to the public.

Dated: September 29, 2004,

James A. Esget,

Program Manager, Pacific Northwest Region.

[FR Doc. 04–22458 Filed 10–5–04; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 02–10]

Kathy A. Morall, M.D.; Revocation of Registration

I. Background

On September 28, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration issued an Order to Show Cause to Kathy A. Morall, M.D., (Respondent), proposing to revoke her DEA Certificate of Registration. The Basis for the Order to Show Cause was that Respondent's registration would be inconsistent with the public interest as that term is used 21 U.S.C. 823(f). More specifically, the OTSC alleged that in November 1998, DEA was alerted that Respondent had ordered large amounts of phentermine and Meridia (Schedule IV controlled substances) for delivery to her home address. DEA notified the Respondent that she could not have controlled substances delivered to her home because she was registered elsewhere. Respondent then asked for a change of address on her registration.

In December 1998, DEA investigators conducted an inspection of Respondent's registered location—her home. When the investigators arrived and asked Respondent where she kept the controlled substances, she initially denied having any controlled substances at home. When the investigators asked her about the whereabouts of the phentermine and Meridia that she had recently ordered, she admitted that the drugs were in her home. When shown the location of the drugs, the investigators noted that the drugs were in a box in a closet, and were not stored in a securely locked, substantially constructed cabinet, as required.

When the investigators asked for the Respondent's dispensing records, she said that they were in her former office in Denver. She agreed to send them to the investigators, but later changed her mind, explaining that she wanted to talk to an attorney first. When finally received, the dispensing records were incomplete. The Respondent failed to provide any records of inventories, theft/loss reports or drug destruction reports.

On January 5, 1999, during the execution of an administration inspection warrant, the Respondent admitted that her record keeping was inadequate and that she had failed to maintain any inventories of controlled substances. She also admitted that the dispensing records that she provided had been created from memory. The Respondent was also unable to provide patient charts, because she had been evicted from her offices and no longer had access.

During the inspection, the investigators found two phentermine vials, one empty and one partially full. Both were issued in the name of a purported patient. The Respondent told the investigators that the drugs were prescribed for her uncle. The Respondent's husband told the investigators, however, that the ''uncle'' was really just a friend of the family.

Accountability audits of the Respondent's handling of phentermine and Meridia form 1997 to 1999 showed various overages and/or underages of the drugs. The investigators also learned that Respondent had filed a report with the police concerning the theft from her offices of controlled substances, but she had not notified DEA, as required by regulation.

The Respondent requested a hearing on the issues raised in the Order to Show Cause and the matter was placed on the docket of Administrative Law Judge Mary Ellen Bittner (the ALJ). Following prehearing procedures, testimony was presented before the ALJ on June 19 and 20, 2002, in Arlington, Virginia. The Government presented testimony from one witness and had admitted several exhibits into evidence. In addition to her own testimony, the Respondent presented two witnesses and also had several exhibits admitted into evidence. After the hearing, both parties submitted Proposed Findings of Fact, Conclusions of Law and Argument.

On July 24, 2003, the ALJ certified and transmitted the record to the Acting Administrator of DEA. The record included, among other things, the Opinion and Recommended Rulings, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, the findings of fact and conclusions of law proposed by all parties, all of the exhibits and affidavits, and the transcript of the hearing sessions. In her opinion, the ALJ recommended that Respondent's DEA registration not be revoked.

II. Final Order

The Deputy Administrator does not adopt the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge. The Deputy Administrator has carefully reviewed the entire record in this matter, as defined above, and hereby issues this final rule and final order prescribed by 21 CFR 1316.67 and 21 CFR 1301.46, based upon the following findings of fact and conclusions of law.

A. Findings of Fact

On July 9, 1997, the Respondent was assigned DEA Certificate of Registration number BM5412868, in Schedules II through V. The registration was issued to the Respondent at 128 Steele Street, Suite 200, Denver, Colorado (the Denver clinic). That registered location was known as the Life-Plan Weight Loss Center and was affiliated with the Holland Center for Family Health, and Arizona professional corporation. The Life-Plan Weight Loss Center was owned by Joshua Holland, M.D., and Arizona based medical practitioner, who was also registered with DEA in the State of Arizona. Dr. Holland had previously operated a successful weight loss clinic in Arizona and he sought to open a similar clinic in the Denver area. To that end, he placed an advertisement in a newspaper, seeking a physician to run the Denver clinic. The Respondent was ultimately hired for the position. As the only physician at the Denver clinic, the Respondent was responsible for ordering controlled substances under her DEA registration number.

The Respondent's business arrangement with Dr. Holland dissolved sometime during November 1997 based upon financial differences between the two. Sometime after November 1997, the Respondent left the employ of Dr. Holland and relocated from Suite 200 to Suite 202 of the 128 Steele Street location, where she intended to maintain her own clinic under the name Total Health Care Systems.

At the hearing, a DEA Diversion Investigator (DI) testified about the instigation of the investigation of the Respondent. She introduced a swore statement from a registration technician (RT) at DEA's Denver Division. In the statement, the RT stated that on November 12, 1998, she received a voice mail message from the Respondent. In the message, the Respondent stated that she needed to obtain the controlled substance phentermine as soon as possible. Before returning the Respondent's call, the RT was instructed by her supervisor to return a previous call from a representative of Horizon Wholesale (Horizon) concerning a request by the Respondent to have controlled substances delivered to an unregistered address.

On the same day, the RT placed a call to Horizon. The Horizon representative expressed concern that when the Respondent placed an order for controlled substances, the return telephone number that she gave was for an answering service. He expressed further concern that Horizon could not obtain a business telephone number for the Respondent. The RT instructed the Horizon representative not to ship controlled substances to the Respondent at an address different from her registered address. The RT also requested the telephone number to the answering service that was provided by the Respondent.

After a number of attempts, the RT was able to get in touch with the Respondent. The Respondent informed the RT that she needed to order drugs so that they could be shipped to her home address. When asked whether she was storing controlled substances at her home, the Respondent replied in the affirmative and told the RT that she had a safe at the location to store the controlled substances. The DI also testified that the Respondent also informed another DEA employee that she had a safe at her home.

The RT informed the Respondent that she was not allowed to store controlled substances at her home for the sake of convenience, and could only store controlled substances at a registered location. The Respondent further added that she did not store or dispense controlled substances from the Steele Street location.

Following discussions on the proper manner to modify a DEA registration, the Respondent faxed to the DEA Denver office a request to modify her registration to reflect her home address, 8285 South Marion Way, Littleton, Colorado (the South Marion Way location). The Respondent's request to have controlled substances delivered to her home triggered DEA's investigation.

Following the modification of the Respondent's DEA registration, the DEA investigators received information from Horizon that the Respondent ordered approximately 3000 dosage units of phentermine and 200 dosage units of Meridia to be delivered to the Respondent's home. In the interest of assessing the security of the ordered drugs, and to seek accountability and justification for their use, DEA investigators went to the Respondent's home on December 1, 1998.

When they arrived at the Respondent's home, the DEA investigators asked to review records of the Respondent's handling of controlled substances. Specifically, the investigators requested dispensing records, records of theft or losses, records of drug destructions or any disposals of controlled substances. The Respondent did not provide any of the requested records, including inventories. The Respondent informed the investigators that all of her records were still at her Steele Street office location. The Respondent further stated that she was in the process of moving her practice from the Steele Street location to her home address. When asked if she was seeing patients at her home location, the Respondent answered in the negative.

The investigators then asked to see the controlled substances that were ordered by the Respondent. She told the investigators that the controlled substances were at the Steele Street location. When reminded that controlled substances were to be stored at a registered premise, the Respondent changed her story, claiming that she was not in possession of any controlled substances at any location. When the investigators asked about the 3,000 dosage units of controlled substances that were shipped to her home by Horizon, the Respondent finally admitted that the controlled substances ere in her home, and retrieved them out of an open box in a closet.

The box was small and made of cardboard. In addition to the bottles of pills, it contained trash, cotton, candy wrappers and loose pills. The Respondent informed the investigators that the loose pills came from a previous shipment. Approximately half of the controlled substances that Respondent had ordered were gone, and some of the bottles of phentermine were opened. There were also empty bottles of Meridia in the box. Investigators then asked to see the Respondent's safe. Although she had told RT that she had a safe in her home, she admitted that she did not have one, but intended to get one.

The Respondent told the investigators that she dispensed the missing drugs to her patients but that she had not seen any patients in the previous few weeks. The Respondent then admitted that she had not any patients in here home at all, but had dispensed the medications by mailing them to patients. The Respondent also informed investigators that her husband and son had access to various areas of the house. The DI testified that the controlled substances were not stored or secured as required by DEA laws and regulations.

The investigators had a discussion with the Respondent about the need for maintaining proper records, and the Respondent agreed that any controlled substance records remaining at the Steele Street location were to be transferred to the new registered location. The investigators then conducted a physical count of controlled substances on hand. According to physical count, there were 735 15mg. phentermine tablets and 785 30mg. phentermine tablets.

With respect to controlled substance records that were not provided, arrangements were made with the Respondent to provide the requested records the following day. The DI further requested that the Respondent provide records dating back two years. On December 2, 1998, the mail message from the Respondent saying that she had the requested records and that they were in the mail. However, on December 4, the DI received a second voice mail from the Respondent in which the Respondent stated that she wished to consult with an attorney before turning over the records.

The Respondent eventually sent what she called controlled substance records to DEA on December 21, 1998. Although DEA requested records dating back two years, the Respondent only provided records dating back two months, and only covering the shipments from Horizon. The investigators found that some of the records sent by Respondent appeared to have been ''manufactured.''For example, they found that receipt date of the drugs was incorrect and that the dates of dispensation were in chronological

order up until December 11, 1998, when the next entry reflected a date of December 3, 1998. In addition, the totals of the drugs on the date of the December 1, 1998, inventory did not match the records provided by the Respondent on December 21. Again, the Respondent failed to provide an initial inventory, and her controlled substance records were incomplete and inaccurate.

Upon receipt and inspection of the copied records received from the Respondent, the DI called the Respondent and requested original records. When the Respondent did not respond to the request, the DI applied for an administrative inspection warrant to inspect the Respondent's new registered location. The DI sought the inspection warrant in order to verify the correctness of inventories, records, reports and other documents required to be kept under the CSA.

On January 5, 1999, the DEA investigators returned to the Respondent's registered location to execute the administrative inspection warrant. The investigators found that Respondent's records were intermingled; patient sheets were found among personal papers, financial data, and the like. The investigators also found a yellow notepad where Respondent had apparently attempted to reconcile the quantities of drugs given to patients.

The investigators also found loose pieces of paper entitled ''Medication Accountability'' in a desk, and in a box in the closet. These records were not part of the patient charts. The investigators also collected 15 patient charts for inspection. Two of the charts had no information in them. In many of the other charts, the last entry for the patients was either September or October 1997. In addition, these records were not of patients who purportedly received dispensations over the previous two months.

The investigators also found a prescription bottle for phentermine for Carl Ousley, which listed the Respondent as the prescribing physician. When the investigators asked the identity of Mr. Ousley, the Respondent said he was her uncle. The Respondent's husband, however, stated that Mr. Ousley was only a friend.

In the garage of the Respondent's home, the investigators found an empty bulk manufacturer's bottle of 100-count tablets of phentermine. Although the investigators attempted to obtain from the Respondent the name of the supplier of the drugs, they were never able to determine its origins. The Respondent could not even provide the names of wholesalers from whom she purchased controlled substances. Although the Respondent informed the investigators that she had dispensed these medications to patients, she could not provide documentation to support this claim. There were no original receipts for drug purchases and the Respondent did not know where they could be located.

The DEA investigators found prescription vials for various controlled substances in different parts of the Respondent's home. Investigators also inspected a filing cabinet in which controlled substances were stored. The cabinet was not locked and it contained two empty bottles of Meridia and three opened bottles of phentermine. The investigators also found an empty prescription vial in the master bedroom closet. The investigators could not determine the identity of the drug, the patient or the prescriber because the label had been peeled off.

DEA investigators asked the Respondent if she personally used phentermine. The Respondent acknowledged that she had been given a prescription from her previous business partner, Dr. Holland, and had taken the drug during the previous holiday. The Respondent further stated that she didn't have any more pills from that prescription, but doubted that Dr. Holland would vouch for the prescription because of the bad breakup of their business arrangement. The Respondent further denied any personal use of any phentermine from bottles and vials found around her home.

The DEA investigators also discussed with the Respondent the last time she dispensed controlled substances from her new registered locations. The Respondent informed investigators that she had not dispensed from that location since December 1, 1998. The Respondent also informed investigators that they were free to inspect the Steele Street location because that was where the remainder of her dispensing records were maintained.

The Respondent was asked about inconsistencies in the records that she had previously mailed to DEA. When asked how she planned to reconcile these inconsistencies, the Respondent stated that she could do it from memory. As noted above, during the January 5 inspection, the Respondent informed DEA investigators that she had not dispensed controlled substances from her new registered location since December 1, 1998. However, the results of the physical count performed during that inspection revealed different totals: for example, the December 1, 1998, physical count for phentermine 735 tables; on January 5, 1999, the physical count was 542. The physical count for December 1 should have matched that for January 5.

The investigators further noted that when comparing the records mailed by the Respondent to those seized by investigators on January 5, the records did not match as well. For example, the mailed records for phentermine 30mg. showed one full bottle of 1,000 tablets and one partial bottle of 220, for a balance of 1,220 on hand. However, the physical count that day was 735 tablets.

Following the January 5 inspection, DEA performed two accountability audits of controlled substances handled by the Respondent. The first audit period chosen was from November 1, 1998 to December 1, 1998, and covered the drugs phentermine (30mg. and 15mg.) and Meridia (15mg. and 10mg.). The audit resulted in a shortage of 740 dosage units of phentermine products. DEA investigators performed a second accountability audit, covering the period of November 1, 1998 to January 5, 1999. The audit for that time period reflected shortages and overages of phentermine products.

The investigators had ongoing discussions with the Respondent to inspect the Steele Street location, in order to acquire the remaining dispensing records that Respondent said were there, and reconcile the discrepancies found in DEA's audits. However, the Respondent failed to inform the DEA investigators that she had been evicted from that location. Some time in January 1999, the building manager of the Steele Street location informed DEA that Respondent had been evicted for ''nonpayment.'' Despite the Respondent's assurances that she was agreeable to a meeting at that location, she never actually agreed to a meeting there on a set date.

In light of the Respondent's refusal to cooperate with the investigators, they applied for a search warrant for the Steele Street location (Suite 202). The warrant was executed on May 6, 1999. During the inspection of Suite 202, the investigators took photos of the premises. Various controlled substances were found at that location as well as miscellaneous records.

The investigators generated an inventory of controlled substances found in Suite 202. These drugs were found on a cart, which had been secured by the building manager. The cart had no locking mechanism, and the drugs in the cart were not secured in any fashion when found by the building manager. The Investigators also determined that these controlled substances were ordered under the Respondent's DEA registration number from Quality Care

Pharmaceuticals, a controlled substance distributor. The investigators found that these drugs had expired. They were counted, treated as abandoned, and put aside for destruction. These drug products were identified as phentermine 30mg. in various quantities and number of containers.

Copies of ''Dispense-Quick-Log'' sheets (labels) had been provided with vials of drugs from Quality Care Pharmaceuticals. The labels did not meet DEA record keeping requirements because they did not list which drug was dispensed or the quantity dispensed. These log sheets were found tossed in miscellaneous boxes throughout the office.

The DEA investigators also seized patient files from Suite 202. The investigators tried but failed to find current dispensing records of what drugs the Respondent had purchased from Horizon. An example in this regard was the patient record for patient S.S. The patient file did not contain dispensing information for controlled substances, i.e., quantities, etc. The other patient files seized were fairly representative of the record keeping in all of the files, in that the last entries in the files were dates in 1997 and early 1998.

Following the execution of the search warrant, further accountability audits were conducted. These audits covered the period of November 25, 1997 and January 5, 1999, and again, the controlled substances audited were phentermine (30mg. and 15 mg.) and Meridia (5, 10 and 15mg.). [*Id.*] The revised audits were designed to include information obtained from the inspection of the Steele Street location, the Respondent's new registered location, and information obtained from a second drug supplier, Quality Care Pharmaceuticals. These audits were also conducted to give the Respondent credit for the miscellaneous papers, receipts, and dispensation notes, even though these items did not meet DEA record keeping requirements.

The results of DEA's initial audit (excluding records that were not maintained pursuant to DEA requirements) revealed that the Respondent was unable to account for 11,148 dosage units of controlled substances. Through the use of the records that the Respondent supplied, DEA found that Respondent was unable to account for 7,154 dosage units of controlled substances.

DEA's investigation also revealed that Respondent did not maintain a record of the transfer of controlled substances. In a call to Quality Care Pharmaceuticals, DEA investigators learned that quantities of Redux and Pondimin (both Schedule IV controlled substances) were transferred from Respondent's Steele Street office to Quality Care. The Respondent had previously told investigators that she had not destroyed or returned any drugs.

B. Conclusions of Law

Pursuant to 21 U.S.C. 823(f) and section 824(a)(4) the Deputy Administrator of the Drug Enforcement Administration may revoke a DEA Certificate of Registration if she determines that the continued registration of the registrant would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), in determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may relay on any one or combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or application for registration be denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16,422 (1989).

In this case, factors two, four and five are relevant in determining whether Respondent's DEA Certificate of Registration should be revoked and her pending application for renewal of that registration should be denied.

1. Factors Two and Four—Experience in Dispensing Controlled Substances and Compliance With Applicable State and Federal Law [1]

Factors two and four are also relevant with respect to Respondent's: (1) Failure to maintain a record of her return of Schedule IV controlled substances to a supplier, as required by 21 CFR 1307.12; (2) failure to obtain a DEA registration for the South Marion location prior to dispensing controlled substances from that location, as required by 21 CFR 1301.11 and 1301.12; (3) failure to store Schedule IV controlled substances in a securely locked, substantially constructed cabinet at her former registered location at 128 Steele Street location, Suite 202, as well as the modified registered location at South Marion Way, as required by 21 CFR 1301.75(a); (4) failure to maintain complete and accurate records with respect to the receipt and dispensing of controlled substances, as required by 21 U.S.C. 827(a)(3), and 21 CFR 1304.03, 1304.04 and 1304.21(a) (these statutory provisions are further relevant to Respondent's failure to account for between 7,000 to over 11,000 dosage units of Schedule IV controlled substances); (5) failure to take an initial inventory of controlled substances on hand on the date she engaged in the dispensing of controlled substances as required by 21 U.S.C. 827(a)(1) and 21 CFR 1304.11; and (6) failure to maintain inventories and records of controlled substances, either separately from all other records, and in a readily retrievable fashion, as required by 21 CFR 1304.04(f)(2) and (g).

Thus, the Respondent committed numerous violations of the Controlled Substances Act by failing to adhere to proper record-keeping. The importance of the DEA system of record-keeping is well settled. The purpose of the enactment of the 1970 Uniformed Controlled Substances Act (the ''Act'') was to provide a system for the control of drug traffic and to prevent the abuse of drugs. The statutory scheme envisioned by the Act is one of control through record-keeping. *United States* v. *Stidham,* 938 F. Supp. 808, 814 (S.D. Ala. 1996). Congress sought measures to monitor the drug transactions of registrants, who, with authority to dispense drugs, have the greatest access to controlled substances, and therefore the greatest opportunity for diversion. *United States* v. *Moore,* 423 U.S. 122, 135, (1975).

In some cases, revocation of a DEA registration is an appropriate measure for failure to maintain adequate controlled substance records and inventories. Compliance with Federal laws and regulations relating to the handling, record keeping, reporting, and security of controlled substances are essential to assure that adequate control is maintained to prevent the diversion of controlled substances from legitimate channels. North American Medical, Inc., 53 FR 39,543 (1988). DEA has also found grounds for revocation of a DEA

[1] Most of the conduct at issue regarding the Respondent's experience dispensing controlled substances while not complying with DEA recordkeeping requirements also involve and further demonstrate Respondent's history of failing to comply with state and federal laws concerning controlled substances. Therefore, the Government's analysis under 21 U.S.C. § 823(f)(2) and (4) has been combined. *See* Service Pharmacy, Inc., 61 FR 10,791, 10,795 (1996).

registration in situations involving poor record keeping practices, even where no personal use or criminal convictions involving controlled substances were determined. RX Returns, Inc., 61 FR 37081 (1996).[2]

2. Factor Five—Conduct Which May Threaten the Public Health and Safety

The Respondent testified at the hearing concerning the reasons for her very poor record-keeping. She had no assistance to help with record-keeping and during the period at issue, she was going through extremely stressful circumstances. She developed a condition involving her pituitary gland that lowered her voice, caused her to grow a beard and lose hair. She thought that she might have to have brain surgery. At the same time, her son had a seizure and was diagnosed with a disease related to sickle cell anemia. Several friends died, included one suicide. She was very depressed during this period, and as a result, her recordkeeping suffered.

These circumstances may very well partly excuse some of the Respondent's record-keeping failures. The Deputy Administrator is particularly disturbed, however, by the numerous occasions that the Respondent provided false information to DEA investigators and repeatedly frustrated their attempts to conduct their investigation. At the hearing, the Respondent claimed that she had never meant to mislead the investigators and denied making false statements. The Deputy Administrator finds, however, that the Respondent has no credibility, because it is absolutely clear that she lied to the investigators on numerous occasions.

The Respondent lied about possessing controlled substances at her house. She lied about having a safe in her house in which to store controlled substances. She lied about treating patients from her home. She lied about the true identity of a friend for whom she had written prescriptions for controlled substances. She misled the investigators about the existence of patient records. She continually maintained that she had controlled substance records at her office, when in truth she did not. She later admitted that she had tried to create the records from memory. The Respondent's refusal to cooperate with DEA investigators led DEA to request the issuance of an administrative inspection warrant of her South Marion Way location and subsequently, the Steele Street location.

Moreover, the Respondent agreed to assist DEA investigators in their inspection of the Steele Street location, without telling them that she had been evicted from that location. The Respondent's failure to cooperate with the investigators in their efforts to inspect the former registered location necessitated the execution of a search warrant. The Respondent also made false statements regarding the transfer of drugs. Despite her denials the investigators discovered that the Respondent had transferred Schedule IV controlled substances to Quality Care Pharmaceuticals.

The circumstances surrounding the Respondent's treatment of patients from her home is also troubling. As noted above, the Respondent was unable to account for between 7,000 and 11,000 dosage units of controlled substances. While the Respondent asserted that the controlled substances were legitimately dispensed to patients, she had no records to support her assertion. The Respondent's attempts at creating controlled substance records could not reconcile the shortages. Even the Respondent's own patient records did not bear out her assertions that she continued to dispense drugs to patients throughout 1998, as many of the records showed entries which ended in 1997 and early 1998.

The Deputy Administrator does not necessarily find that these controlled substances were diverted. Nevertheless, the lack of proper documentation to account for the shortage of large quantities of drugs; the Respondent's admission to the use of phentermine; her demonstrated lack of candor; empty drug vials around her home of which she was unable to account for their origins or disposition, all suggest possible drug use on the Respondent's part, or by someone close to her.

III. Conclusion

The preponderance of evidence demonstrates that the Respondent's continued registration would be contrary to the public interest. If the Respondent's only failures involved record-keeping, the Deputy Administrator might find it appropriate to impose a lesser sanction than revocation of the Respondent's DEA registration. The Respondent's false and misleading statements, however, cannot be excused. DEA cannot maintain the integrity of its regulatory system if its registrants, when asked to provide information required by law, provide false information. Accordingly, the Deputy Administrator, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100 and 0.104, hereby orders that the Respondent's DEA Registration be, and it hereby is, revoked, and that any requests for renewal or modification be, and hereby are, denied. This order is effective November 5, 2004.

Dated: September 28, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–22422 Filed 10–5–04; 8:45 am]

BILLING CODE 4410–09–M

[2] While the Deputy Administrator in *RX Returns* found revocation appropriate, the revocation was stayed and a one year period of probation was imposed. [*Id.* at 37,090]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Michael J. Schwartz, MD.; Revocation of Registration

On January 5, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Michael J. Schwartz, M.D. (Dr. Schwartz) who was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BS5860590, pursuant to 21 U.S.C. 824(a)(3). Specifically, the Order to Show Cause alleged that Dr. Schwartz was without State license to handle controlled substances in the State of Louisiana. The Order to Show Cause also notified Dr. Schwartz that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Schwartz at his registered location in Kenner, Louisiana, with a second copy sent to Dr. Schwartz' legal counsel in New Orleans. The order sent to Dr. Schwartz' address of record was subsequently returned to DEA by the United States Postal Service with a stamped notation: ''attempted, not known.'' According to the return receipt of the second order sent to the registrant's attorney, it was accepted on Dr. Schwartz' behalf on or around January 15, 2004. DEA has not received a request for hearing or any other reply from Dr. Schwartz or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the attempted delivery of the Order to Show Cause to the registrant's address of record, as well as to a second address, and (2) no request for hearing having been received, concludes that Dr. Schwartz is deemed to have waived his hearing right. *See David W. Linder,* 67 FR 12579 (2002). After considering material from the investigative file in this matter, the

Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (3) and 1301.46.

The Deputy Administrator finds that Dr. Schwartz is currently registered with DEA as a practitioner authorized to handle controlled substances in Schedules II through V. According to information in the investigative file, on August 4, 2003, DEA received information from the Louisiana State Board of Medical Licensure (Board) that effective July 30, 2003, Dr. Schwartz was ''no longer authorized to engage in the practice of medicine in any form in the State of Louisiana.'' An accompanying document in the file reveals that the Board summarily suspended Dr. Schwartz' State Medical license. The underlying basis for the board's suspension order was not specified.

Also on August 4, 2003, DEA received information that in response to the aforementioned suspension order of the Board, the Louisiana State Department of Health and Hospitals (LSDHH) summarily suspended Dr. Schwartz' State Controlled Dangerous Substance License. According to a copy of a letter dated August 6, 2003 from LSDHH to Dr. Schwartz (obtained by a DEA investigator), Dr. Schwartz was prohibited from reapplying for reinstatement of his stated controlled substance registration ''* * * until the [Board] notifies [LSDHH] in writing that [Dr. Schwartz'] controlled substance privileges have been reinstated.''

There is no evidence before the Deputy Administrator to rebut findings that Dr. Schwartz' Louisiana medical license, as well as his State controlled substance license, have been suspended, or that the suspensions have been lifted. Therefore, the Deputy Administrator finds that Dr. Schwartz is currently not authorized to handle controlled substances in Louisiana.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without State authority to handle controlled substances in the State in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Richard J. Clement, M.D., 68 FR 12103 (2003); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that Dr. Schwartz' State controlled substance license has been suspended and there is no information before the Deputy Administrator which points to the suspension having been lifted. As a result, Dr. Schwartz is not licensed to handle controlled substances in Louisiana, where he is registered with DEA. Therefore, he is not entitled to maintain that registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BS5860590, issued to Michael J. Schwartz, MD., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of the aforementioned registration be, and it hereby is, denied. This order is effective November 5, 2004.

Dated: September 8, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–22421 Filed 10–5–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation, DOJ.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the National Crime Prevention and Privacy Compact Council (Compact Council) created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the Federal Government and 21 States are parties to the Compact which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative Federal-State system to exchange such records.

The United States Attorney General appointed 15 persons from Federal and State agencies to serve on the Compact Council. The Compact Council will prescribe system rules and procedures for the effective and proper operation of the Interstate Identification Index system.

Matters for discussion are expected to include:

(1) Noncriminal Justice Outsourcing Rule;

(2) Establishing minimum standards for identification verification of applicants when being fingerprinted; and

(3) Discussion of the notice advising of the approved methods for positive identification.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement with the Compact Council or wishing to address this session of the Compact Council should notify Mr. Todd C. Commodore at (304) 625–2803, at least 24 hours prior to the start of the session. The notification should contain the requestor's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. Requestors will ordinarily be allowed up to 15 minutes to present a topic.

DATES AND TIMES: The Compact Council will meet in open session from 9 a.m. until 5 p.m., on November 3–4, 2004.

ADDRESSES: The meeting will take place at the Hyatt Regency Denver, 1750 Welton Street, Denver, Colorado, telephone (303) 295–1234.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mr. Todd C. Commodore, FBI Compact Officer, Compact Council Office, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0148, telephone (304) 625–2803, fascimile (304) 625–5388.

Dated: September 23, 2004.

Monte C. Strait,

Section Chief, Programs Development Section, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 04–22450 Filed 10–5–04; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations: Prohibited Transaction Class Exemption T88–1

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an

opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employee Benefits Security Administration is soliciting comments concerning the extension of a currently approved collection of information, Prohibited Transaction Class Exemption T88–1.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted on or before December 6, 2004.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Exemption T88–1 adopts, for purposes of the prohibited transaction provisions of section 8477(c)(2) of the Federal Employees' Retirement System Act of 1986 (FERSA), certain prohibited transaction class exemptions (the Class Exemptions) granted pursuant to section 408(a) of the Employee Income Security Act of 1974.

II. Current Actions

This existing collection of information should be continued because, without the relief provided by this exemption, certain transactions described in the Class Exemptions might be prohibited by under FERSA. The recordkeeping requirements incorporated within the class exemption are intended to protect the interests of plan participants and beneficiaries. This ICR is intended to provide the Department with sufficient information to support a finding that the exemption meets the statutory standards of section 408(a) of ERISA, and to provide affected parties with the opportunity to comment on the proposed transaction, while at the same time reducing the regulatory burden associated with processing individual exemptions for transactions prohibited under ERISA. The exemption affects participants and beneficiaries of the plans that are involved in such transactions as well as the party entering into the transaction with the plan.

III. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

IV. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on November 30, 2004. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

Agency: Employee Benefits Security Administration.

Title: Prohibited Transaction Exemption 96–62; Accelerated Approval of an Otherwise Prohibited Transaction.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0095.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals.

Total Respondents: 42.

Total Responses: 42.

Frequency: On occasion.

Estimated Total Burden Hours: 53.

Total Annual Costs (Operating and Maintenance): $37,884.

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

Dated: September 30, 2004.

Gerald B. Lindrew,

Deputy Director, Employee Benefits Security Administration, Office of Policy and Research.

[FR Doc. 04–22430 Filed 10–5–04; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations: Prohibited Transaction Class Exemption 96–62

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employee Benefits Security Administration is soliciting comments concerning the extension of a currently approved collection of information, Prohibited Transaction Class Exemption 96–62.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted on or before December 6, 2004.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) provides that the Secretary of

Labor may grant exemptions from the prohibited transaction provisions of sections 406 and 407(a) of ERISA, and directs the Secretary to establish an exemption procedure with respect to such provisions. On July 31, 1996, the Department published Prohibited Transaction Exemption 96–62, which, pursuant to the exemption procedure set forth in 29 CFR 2570, subpart B, permits a plan to seek approval on an accelerated basis of otherwise prohibited transactions. A class exemption will only be granted on the conditions that the plan demonstrate to the Department that the transaction is substantially similar to those described in at least two prior individual exemptions granted by the Department and that it presents little, if any, opportunity for abuse or risk of loss to a plan's participants and beneficiaries. This ICR is intended to provide the Department with sufficient information to support a finding that the exemption meets the statutory standards of section 408(a) of ERISA, and to provide affected parties with the opportunity to comment on the proposed transaction, while at the same time reducing the regulatory burden associated with processing individual exemptions for transactions prohibited under ERISA.

II. Review Focus

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on November 30, 2004. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

Agency: Employee Benefits Security Administration.

Title: Prohibited Transaction Exemption 96–62; Accelerated Approval of an Otherwise Prohibited Transaction.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0098.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals.

Total Respondents: 42.

Total Responses: 42.

Frequency: On occasion.

Estimated Total Burden Hours: 53.

Total Annual Costs (Operating and Maintenance): $43,491.

Dated: September 30, 2004.

Gerald B. Lindrew,

Deputy Director, Employee Benefits Security Administration, Office of Policy and Research.

[FR Doc. 04–22431 Filed 10–5–04; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations Prohibited Transaction Class Exemption 81–8

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Employee Benefits Security Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Prohibited Transaction Class Exemption 81–8 on investment of plan assets in certain types of short-term investments. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted on or before December 6, 2004.

ADDRESSES: Mr. Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax (202) 693–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 81–8 permits the investment of plan assets that involve the purchase or other acquisition, holding, sale, exchange or redemption by or on behalf of an employee benefit plan in certain types of short-term investments. These include investments in banker's acceptances, commercial paper, repurchase agreements, certificates of deposit, and bank securities. Absent the exemption, certain aspects of these transactions might be prohibited by section 406 of the Employee Retirement Income Security Act (ERISA).

Provided that the requirements of the exemption are met, the exemption allows plans to invest in certain short term investments in debt obligations issued by certain persons who provide services to the plan or who are affiliated with such service providers that otherwise might be prohibited under sections 406 and 407(a) of ERISA. Without this exemption, these types of short term transactions might not be permitted.

In order to ensure that the exemption is not abused, that the rights of participants and beneficiaries are protected, and that the conditions of the exemption have been satisfied, the Department has included in the exemption two basic disclosure requirements. Both affect only the portion of the exemption dealing with repurchase agreements. The first requirement calls for the repurchase agreements between the seller and the plan to be in writing. The second requirement obliges the seller of such repurchase agreements to agree to provide financial statements to the plan at the time of the sale and as future statements are issued. The seller must also represent, either in the repurchase agreement or prior to the negotiation of

each repurchase agreement transaction, that there has been no material adverse change in the seller's financial condition since the date that the most recent financial statement was furnished which has not been disclosed to the plan fiduciary with whom the written agreement is made.

Without the recording and disclosure requirements included in this ICR, participants and beneficiaries of a plan would not be protected in their investments, the Department would be unable to monitor a plan's activities for compliance, and plans would be at a disadvantage in assessing the value of certain short-term investment activities.

II. Desired Focus of Comments

The Department of Labor is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- 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.

III. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on November 30, 2004. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

Agency: Department of Labor, Employee Benefits Security Administration.

Title: Prohibited Transaction Class Exemption 81–8 for Investment of Plan Assets in Certain Types of Short-Term Investments.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0061.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 45,969.

Total Responses: 229,845.

Frequency of Response: On occasion.

Estimated Burden Hours: 31,900.

Estimated Burden Costs: $85,000.

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

Dated: September 30, 2004.

Gerald B. Lindrew,

Deputy Director, Employee Benefits Security Administration, Office of Policy and Research.

[FR Doc. 04–22432 Filed 10–5–04; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Health Standards for Diesel Particulates (Underground Metal and Nonmetal Mines)

ACTION: Extension of comment period for an additional 30-day period to accommodate request for additional time.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections 57.5060, 57.5066, 57.5070, 57.5071, and 57.5075—Health Standards for Diesel Particulates (Underground Metal and Nonmetal Mines). The notice was published on August 11, 2004 (69 FR 48897).

DATES: Submit comments on or before December 6, 2004

ADDRESSES: Send comments to Melissa Stoehr, Acting Chief, Records Management Branch, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via E-mail to *stoehr.melissa@dol.gov*. Ms. Stoehr can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

These sections require mine operators to take certain actions to limit the concentration of diesel particulate matter (DPM) to which metal and nonmetal miners are exposed in underground areas of a mine where miners normally work or travel. If a mine has technological constraints in meeting this time requirement, then the mine operator can file a special extension application after January 19, 2006, under § 57.5060(c). Section 57.5071 requires mine operators to sample the air as often as necessary to determine that DPM concentrations do not exceed the limit. Also under this section, if a mine environment is above the DPM concentration limit, mine operators will have to take corrective actions and post the corrective actions taken. Mine operators must also provide adequate respiratory protection to overexposed miners and enroll them in a respiratory protection program until engineering and administrative controls are shown to be effective in limiting the DPM levels to the concentration limit.

Mine operators must also take certain actions to ensure that diesel-powered equipment is maintained and operated in a manner that will limit DPM exposures. Section 57.5066(b) requires mine operators to tag diesel-powered equipment at any time there is any apparent emission-related defect in the equipment.

Each time that there is an emission related problem on a diesel-powered machine and the machine is tagged, there also must be a record made of the equipment tagged. For each diesel machine that has been tagged, an examination must be conducted concerning the tagged equipment and a record must be made of the examination. Section 57.5066(c) requires operators to assure that miners performing emissions-related maintenance have adequate training or

experience concerning the maintenance of diesel powered equipment.

And, all miners at a mine who reasonably can expect to be exposed to diesel emissions on mine property must receive annual training in accordance with § 57.5070(a)(1) through (a)(4).

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the For Further Information Contact section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''Federal Register Documents.''

III. Current Actions

Under 30 CFR 57.5060, 57.5066, 57.5070, 57.5071, and 57.5075.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Health Standards for Diesel Particulates (Underground Metal and Nonmetal Mines).

OMB Number: 1219–0135.

Affected Public: Business or other for-profit.

Frequency: On Occasion, semi-annually and quarterly.

Affected Public: Business or other for-profit.

Respondents: 196.

Total Burden Hours: 2,738.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $562,791.

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

Dated at Arlington, Virginia, this 29th day of September, 2004.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 04–22330 Filed 10–5–04; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0093(2004)]

Construction Standards on Posting Emergency Telephone Numbers and Floor Load Limits; 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 comment.

SUMMARY: OSHA solicits comments concerning its request for an extension of the information collection requirements specified by the Construction Standards on Posting Emergency Telephone Numbers and Floor Load Limits (paragraph (f) of § 1926.50 and paragraph (a)(2) of § 1926.50, respectively). Under § 1926.50(f), employers must post emergency telephone numbers at the worksite if the 911 emergency telephone service is not available, while § 1926.50(a)(2) requires employers to post the maximum safe load limits of floors located in storage areas inside buildings or other structures, unless the floors are on grade.

DATES: Comments must be submitted by the following dates;

Hard copy: Your comments must be submitted (postmarked or received) by December 6, 2004.

Facsimile and electronic transmission: Your comments must be received by December 6, 2004.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0093(2004), by any of the following methods:

Regular mail, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours are 8:15 a.m. to 4:45 p.m., ET.

Facsimile: If your comments are 10 pages or fewer in length, including attachments, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov.* Follow instructions on the OSHA Web page for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Web page at *http://www.OSHA.gov.* Comments, submissions, and the ICR are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Todd Owen at the address below to obtain a copy of the ICR.

(For additional information on submitting comments, please see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.)

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this notice by (1) hard copy, (2) fax transmission (Facsimile), or (3) electronically through the OSHA Web page. Because of security related problems, there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 2693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

All comments, submissions and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at *http://www.OSHA.gov.* Contact the OSHA Docket Office for Information about materials not available through the OSHA Web page and for assistance using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice as well as other relevant documents are available on OSHA's Web page.

II. Background.

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

Two Construction standards, ''Medical Services and First Aid'' (§ 1926.50), and ''General Requirements for Storage'' (§ 1926.250), contain posting provisions. Paragraph (f) of § 1926.50 requires employers to post emergency telephone numbers for physicians, hospitals, or ambulances at the worksite if the 911 emergency telephone services is not available; in the event an employee has a serious injury at the worksite, this posting requirement expedites emergency medical treatment of the employee. Paragraph (a)(2) of § 1926.250 specifies that employers must post the maximum safe load limits of floors located in storage areas inside buildings or other structures, unless the floors are on grade. This provision prohibits employers from overloading floors in areas used to store material and equipment in multi-story units that are under construction, thereby preventing the floors from collapsing and seriously injuring employees.

III. 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.

IV. Proposed Actions

OSHA is proposing to extend the information collection requirements specified by paragraph (f) of § 1926.50 and paragraph (a)(2) of § 1926.250. The Agency will summarize the comments submitted in response to this notice and will include this summary in its request to OMB to extend the approval of these information collection requirements contained in the Standard.

Type of Review: Extension of currently approved information-collection requirements.

Title: Construction Standards on the posting of Emergency Telephone Numbers and Floor Load Limits.

OMB Number: 1218–0093.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local, or Tribal governments.

Number of Respondents: 140,325.

Frequency of Response: On occasion

Total Responses:

Average Time per Response: Varies from 2 minutes (.03 hour) to post emergency numbers to 5 minutes (.08 hour) to post load limits for floors.

Estimated Total Burden Hours: 6,194.

Estimated Cost. (Operation and Maintenance): $112,762.

V. Authority and Signature

John L. Henshaw, 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. 5–2002 (67 FR 65008).

Signed at Washington, DC, on September 30, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–22433 Filed 10–5–04; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before November 5, 2004 to be assured of consideration.

ADDRESSES: Comments should be electronically mailed to: *Daniel_J._Costello@omb.eop.gov;* or faxed to 202–395–5806, Attn: Mr. Daniel Costello, Desk Officer for NARA.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on July 26, 2004 (69 FR 44551 and 44552). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Statistical Research in Archival Records Containing Personal Information.

OMB number: 3095–0002.

Agency form number: None.

Type of review: Regular.

Affected public: Individuals.

Estimated number of respondents: 1.

Estimated time per response: 7 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 7 hours.

Abstract: The information collection is prescribed by 36 CFR 1256.28 and 36 CFR 1256.56. Respondents are researchers who wish to do biomedical statistical research in archival records containing highly personal information. NARA needs the information to evaluate requests for access to ensure that the requester meets the criteria in 36 CFR 1256.28 and that the proper safeguards will be made to protect the information.

2. *Title:* Application and Permit for Use of Space in Presidential Library and Grounds.

OMB number: 3095–0024.

Agency form number: NA Form 16011.

Type of review: Regular.

Affected public: Private organizations.

Estimated number of respondents: 1,000.

Estimated time per response: 20 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 333 hours.

Abstract: The information collection is prescribed by 36 CFR 1280.94. The application is submitted to a Presidential library to request the use of space in the library for a privately sponsored activity. NARA uses the information to determine whether use will meet the criteria in 36 CFR 1280.94 and to schedule the date.

Dated: September 30, 2004.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 04–22420 Filed 10–5–04; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 153rd Meeting

Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on October 29, 2004 from 9 a.m. to 12 p.m. (ending time is tentative) in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. Following opening remarks and announcements, new Council members will be sworn in (tentative) and there will be an update on National Leadership Initiatives and on Congressional/White House activities. The meeting will include two presentations. The first, on Shakespeare in American Communities, will focus on the Alabama Shakespeare Company's tour of military bases. The second will be related to the Martha Graham Dance Company and copyright issues. This will be followed by review and voting on applications and guidelines. The meeting will conclude with general discussion.

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

Dated: October 1, 2004.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 04–22499 Filed 10–5–04; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE BOARD

Sunshine Act; Meetings

AGENCY HOLDING MEETING: National Science Foundation; National Science Board and its Subdivisions.

DATE AND TIME: October 13–14 2004.

October 13, 2004: 8:30 a.m.–5 p.m. *Concurrent Sessions:* 8:30 a.m.–9:30 a.m. Open; 9:30 a.m.–10:30 a.m. Open; 10:30 a.m.–11:30 a.m. Open; 11:30 a.m.–12:15 p.m. Open; 12:15 p.m.–12:30 p.m. Closed; 1 p.m.–1:15 p.m. Open; 1:15 p.m.– 1:30 p.m. Closed; 1:30 p.m.–3 p.m. Open; 3 p.m.–5 p.m. Closed.

October 14, 2004: 8:30 a.m.–3:30 p.m. *Concurrent Sessions:* 8:30 a.m.–10:45 a.m. Open; 10:45 a.m.–11 a.m. Closed; 11 a.m.–12:30 p.m. Open; 12:30 p.m.–1 p.m. Closed; 1:30 p.m.– 1:45 p.m. Closed; 1:45 p.m.–2 p.m. Closed; 2 p.m.–3:30 p.m. Open.

PLACE: The National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, *http://www.nsf.gov/nsb.*

CONTACT FOR INFORMATION: NSF Information Center (703) 292–5111.

STATUS: Part of this meeting will be closed to the public. Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Wednesday, October 13, 2004.

Open:

Subcommittee on S&E Indicators (8 a.m.–9:30 a.m.), Room 1295.
- Approval of minutes
- Discussion & approval of Chapter Outlines for *S&EI 2006*
- Review of key dates in *Indicators* schedule.

Subcommittee on Polar Issues (9:30 a.m.–10:30 a.m.), Room 1235.
- Chair's remarks, approval of minutes
- OPP Director's remarks
- Opening ice channel to McMurdo
- Planning for International Polar Year.

ad hoc Task Group on High Risk Research (10:30 a.m.–11:30 a.m.), Room 1295.
- Discussion of workshop.

Committee on Strategy and Budget (11:30 a.m.–12:15 p.m.), Room 1235.
- Remarks from Chair
- Approval of minutes
- Discussion of planning activities
- Status of FY 2005 budget request to Congress.

Executive Committee (1 p.m.–1:15 p.m.), Room 1295.
- Approval of minutes
- Executive Committee Chair's items
- NSB Chair's items.

Committee on Programs and Plans (1:30 p.m.–3 p.m.), Room 1235.
- Approval of Minutes, March 2004
- Working Group reports:
  - *ad hoc* Task Group on High Risk Research
  - Task Group on Long-Lived Data Collections
  - Subcommittee on Polar Issues.
- NSB action item: Draft Joint Response to the National Academies' Report on Setting Priorities for Large Research Facility Projects Supported by the NSF.

Closed:

Committee on Strategy & Budget (12:15 p.m.–12:30 p.m.), Room 1235.

- Discussion of FY 2006 NSF budget request to OMB.

Executive Committee (1:15 p.m.–1:30 p.m.), Room 1295.
- Director's items, including:
  - Specific personnel matters
  - Future budgets.

Committee on Programs and Plans (3 p.m.– 5 p.m.), Room 1235.
- Future MREFC Program budgets
- Action items.

Thursday, October 14, 2004

Open:

Committee on Audit & Oversight (9:30 a.m.–10:45 a.m.), Room 1235.
- Approval of minutes
- Advisory Committee on GPRA Performance Assessment
- Review of Draft responses to House Appropriations Committee questions regarding use and compensation of NSF IPA's/VSEE/Temporary Workers
- Development of Board position on NAPA study recommendations
- Chief Financial Officer's update
- OIG audit plan for FY 2005.

Committee on Education and Human Resources (11 a.m.–12:30 p.m.).
- Approval of Minutes
- Presentations and Discussion on *Broadening Participation* report
- Discussion of revised Broadening Participation Workshop report
- Reports and Discussion items.

Open Plenary Session of the Board (2 p.m.–3:30 p.m.), Room 1235,
- Approval of minutes
- Resolution to close portions of the December 2004 meeting
- Chairman's report
- Director's report
- Committee reports
- Presentation from Dr. John Brighton, ENG.

Closed:

Committee on Audit & Oversight (10:45 a.m.–11 a.m.), Room 1235.
- Pending Investigations.

ad hoc Committee on Nominating NSB Class of 2006–2012 (12:30 p.m.–1 p.m.), Room 1295.
- Discussion of nominees for appointment as NSB member

Executive Closed Plenary Session of the Board (1:30 p.m. –1:45 p.m.), Room 1235.
- Approval of Executive Closed minutes
- Report from Nominations Committee.

Closed Plenary Session of the Board (1:45 p.m.–2 p.m.), Room 1235.
- Approval of Closed minutes
- Awards & Agreements
- Future MREFC Budgets
- Closed Committee reports.

Michael P. Crosby,

Executive Officer, NSB.

[FR Doc. 04–22575 Filed 10–4–04; 11:55 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting Notice

TIME AND DATE: 9:30 a.m., Wednesday, October 13, 2004.

PLACE: NTSB Board Room, 429 L'Enfant Plaza, SW., Washington, DC 20594

STATUS: The two items are open to the public.

MATTERS TO BE CONSIDERED:

7671 Aviation Accident Report—In-fight Engine Failure and Subsequent Ditching of Air Sunshine, Inc., flight 527, Cessna 402C, N314AB, about 7.35 Nautical Miles West-Northwest of Treasure Cay, Great Abaco Island, Bahamas, July 13, 2003.

7666 Pipeline Accident Report—Storage Tank Explosion and Fire in Glenpool, Oklahoma, April 7, 2003.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, October 8, 2004.

The public may view the meeting via a live or archived Webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov*.

FOR MORE INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: October 2, 2004.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 04–22579 Filed 10–4–04; 12:30 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 AND 50–323]

Pacific Gas and Electric Company; Notice of Partial Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Pacific Gas and Electric Company (the licensee) to partially withdraw its May 29, 2003, application for proposed amendments to Facility Operating License Nos. DPR–80 and DPR–82 for the Diablo Canyon Power Plant, Unit Nos. 1 and 2, respectively, located in San Luis Obispo County, California.

The proposed amendments would modify several surveillance requirements (SRs) in Technical Specifications (TSs) 3.8.1 and 3.8.4 on alternating current and direct current sources, respectively, for plant operation. The revised SRs would have notes deleted or modified to allow the SRs to be performed, or partially performed, in reactor modes that are currently not allowed by the TSs. The current SRs are not allowed to be performed in Modes 1 and 2. Several of the current SRs also cannot be performed in Modes 3 and 4.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 8, 2003 (68 FR 40715). However, by letter dated May 7, 2004, the licensee partially withdrew that portion of the amendment request pertaining to the proposed changes to TS 3.8.4.

For further details with respect to this action, see the application for amendments dated May 29, 2003, and the licensee's letter dated May 7, 2004, which partially withdrew the application for license amendments. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 28th day of September 2004.

For the Nuclear Regulatory Commission.

Jack N. Donohew,

Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–22401 Filed 10–5–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–499]

STP Nuclear Operating Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC, the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–80, issued to STP Nuclear Operating Company (the licensee), for operation of South Texas Project (STP), Unit 2 located in Matagorda County, Texas.

The proposed amendment would change Technical Specification 4.4.4.2 to not require block valve testing should the block valve be required to be closed in accordance with the required actions of the associated limiting condition for operation.

Elevated temperatures were observed on the pressurizer discharge header due to minor power operated relief valve (PORV) 655A leakage during startup from 2RE10. Following valve reseating attempts, temperatures were elevated (compared to historical values), but remained below the alarm setpoint. When the alarm setpoint was reached on September 7, 2004, the PORV block valves were closed in accordance with plant procedures and troubleshooting efforts were initiated to determine the cause. Subsequent testing and investigation confirmed that PORV 655A was leaking-by, and as a result of the leak-by PORV 655A momentarily lifted when its associated block valve was re-opened. It should be noted that due to the PORV design (pilot-assisted) and the fact that the PORV leak-by had allowed the piping between the block valve and the PORV to depressurize during the troubleshooting time period, the momentary lift of the PORV was not an unexpected occurrence. Further engineering evaluation was initiated to determine whether PORV 655A continued to remain Operable. This engineering analysis concluded that PORV 655A was operable, however if the PORV block valve were to remain open and the PORV to continue to leak-by, the resulting elevated temperatures would degrade the Equipment Qualification of the PORVs solenoid and switch cover gaskets before the projected end of the current Unit 2 operating cycle. Therefore, the decision was made on September 9, 2004, to declare PORV 655A inoperable due to excessive seat leakage, and to close the associated block valve in accordance with TS 3.4.4 Action a.

The quarterly surveillance test for the PORV 655A block valve, performed in accordance with SR 4.4.4.2, requires operating the block valve through one complete cycle of full travel. Because PORV 655A is a pilot-assisted valve, it is expected that the PORV will lift momentarily during the block valve stroke. Although the PORV is expected to reseat, performance of this surveillance represents an unnecessary challenge to the RCS pressure boundary. The SR 4.4.4.2 surveillance test for the PORV 655A block valve is due to be performed on September 28, 2004, and the associated grace period expires on October 21, 2004.

Entry into the required action of TS 3.4.4 could not have been reasonably foreseen or anticipated. Therefore, STPNOC requests approval of this license amendment application on an exigent basis by October 21, 2004 (the block valve surveillance due date, including grace period) in order to avoid unnecessary operation of the PORV.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 50.91(a)(6) of Title 10 of the Code of Federal Regulations (10 CFR) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The block valve for the pressurizer power operated relief valve is not a potential accident initiator. Therefore, not requiring a surveillance of the block valve while it is being used to isolate its associated power operated relief valve will not increase the probability of an accident previously evaluated. Not requiring the surveillance of the block valve may slightly reduce the probability of a loss of coolant accident from a stuck open power operated relief valve since it will eliminate the challenge to the power operated relief valve from the pressure transient that results from cycling the block valve.

If pressurizer spray is not available or is not effective, either one of the two pressurizer power operated relief valves may be manually actuated to depressurize the reactor coolant system to mitigate the consequences of a steam generator tube rupture. Not performing the surveillance on the block valve is not relevant to the primary system for depressurizing the reactor coolant system (pressurizer spray). The block valves have been demonstrated by operating experience to be reliable and are also subject to the motor-operated valve testing program. Consequently, the proposed change does not significantly reduce the confidence that the block valve can be opened to permit manual actuation of the power operated relief valve to depressurize the reactor coolant system to mitigate an accident. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different accident from any accident previously evaluated?

Response: No.

The proposed change only affects the performance of the surveillance test for the block valve and does not introduce any operating configurations not previously evaluated.

Therefore, the STPNOC concludes the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to the surveillance requirement for the block valve for the pressurizer power operated relief valve does not affect the assumptions in any accident analyses. There are no changes in plant performance parameters associated with the proposed change to the surveillance requirement for the block valve.

Therefore, the STPNOC concludes the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period.

However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner/requestor is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petitioner/requestor must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Mr. John E. Matthews, Morgan, Lewis & Bokius, LLP, 1111 Pennsylvania Avenue, NW., Washington, DC 20004, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated September 30, 2004, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of September 2004.

For the Nuclear Regulatory Commission.

Mohan C. Thadani,

Senior Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–22402 Filed 10–5–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 050–213]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact For Exemption From Certain Control and Tracking Requirements in 10 CFR Part 20, Appendix G, Section III.E for Connecticut Yankee Atomic Power Company, East Hampton, CT

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Theodore B. Smith, Project Manager, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, Maryland, 20852. Telephone: (301) 415–6721; fax number: (301) 415–5397; e-mail: *tbs1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering the issuance of an exemption from certain requirements in 10 CFR Part 20 for Connecticut Yankee Atomic Power Company to relax certain control tracking requirements related to transportation of low-level radioactive waste from the Haddam Neck Plant (HNP) in East Hampton, Connecticut. The HNP site consists of one permanently shutdown nuclear reactor facility located near East Hampton, Connecticut. Inherent to the decommissioning process, large volumes of slightly contaminated rubble and debris are generated and require disposal. On June 1, 2004, Connecticut Yankee Atomic Power Company (CYAPCO, the licensee) requested an exemption from the requirements in 10 CFR Part 20, Appendix G Section III.E to investigate and file a report to the NRC if shipments of low-level radioactive waste are not acknowledged by the intended recipient within 20 days after transfer to the shipper. This exemption would extend the time period that can elapse during shipments of low-level radioactive waste before the licensee is required to investigate and file a report to the NRC from 20 days to 35 days. The exemption request is based on a statistical analysis of the historical data of low-level radioactive waste shipment times from the licensee's site to the disposal site using truck or combination truck/rail shipping methods. NRC has prepared an Environmental Assessment (EA) in support of this amendment in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The exemption will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed action is to authorize an exemption to extend the 20-day investigation and reporting requirements for shipments of low-level radioactive waste to 35 days from the licensee's East Hampton, Connecticut facility. Specifically, since 2003, the licensee has made over 40 shipments of low-level radioactive waste as part of the decommissioning efforts at the facility. MHF Logistical Solutions (MHF) is the carrier company used by the licensee to perform these shipments. MHF has a tracking system that monitors the progress of the shipments from their originating point at HNP until they arrive at their final destination at Envirocare in Clive, Utah. The shipments are made by either truck or combination truck/rail. According to the licensee, the transportation time alone by either truck or combination truck/rail took over 21 days on average, with one shipment taking 25 days to arrive at Envirocare.

In addition to this time, administrative procedures at Envirocare and mail delivery could add up to 4 additional days. Based on historical data and estimates of the remaining waste at HNP, the licensee could have to perform over 400 investigations and reports to the NRC during the next three years, if the 20-day shipping criteria is maintained. The licensee affirms that the low-level radioactive waste shipments are tracked throughout transportation until they arrive at their intended destination. The licensee believes that the need to investigate, trace, and report to the NRC on the shipment of low-level radioactive waste packages not reaching their destination within 20 days does not serve the underlying purpose of the rule and it is not necessary. As a result, the licensee states that granting this exemption will not result in an undue hazard to life or property.

The staff has prepared the EA in support of the proposed license amendment. The NRC has examined the licensee's proposed exemption request and concluded that it is procedural and administrative in nature. There are no significant radiological environmental impacts associated with this exemption, and it will not result in significant nonradiological environmental impacts.

III. Finding of No Significant Impact

On the basis of the EA, NRC has concluded that there are no significant environmental impacts from the proposed amendment and has determined not to prepare an environmental impact statement.

IV. Further Information

Documents related to this action, including the application for exemption and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: (1) The licensee's exemption request letter dated June 1, 2004, is ML041680573, and (2) the EA is ML042370633. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR

reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 30th day of September 2004.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Deputy Director , Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–22403 Filed 10–5–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 54, SEC File No. 270–376, OMB Control No. 3235–0427.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Sections 32 and 33 of the Public Utility Holding Company Act of 1935, as amended (''Act''), and rules 53 and 54 under the Act, permit, among other things, utility holding companies registered under the Act to make direct or indirect investments in exempt wholesale generators (''EWGs'') and foreign utility companies (''FUCOs''), as defined in sections 32 and 33 of the Act, respectively, without the prior approval of the Commission, if certain conditions are met. Rules 53 and 54 do not create a reporting burden for respondents. Rule 53 does, however, contain recordkeeping and retention requirements. As required by Congress, the Commission mandates the maintenance of certain books and records identifying investments in and earnings from all subsidiary EWGs or FUCOs in order to measure their financial effect on the registered systems.

The Commission estimates that the total annual recordkeeping and record retention burden under rules 53 will be a total of 290 hours (10 hours per respondent × 29 respondents = 290 burden hours). It is estimated that there will be no burden hours associated with rule 54.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Written comments are invited on: (1) 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) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: September 28, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2498 Filed 10–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50477; File No. SR–NASD–2004–116]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 by National Association of Securities Dealers, Inc. Relating to Supervisory Control and Inspection Procedures

September 30, 2004.

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 August 2, 2004, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On September 23, 2004, NASD submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons. For the reasons discussed below, the Commission is granting accelerated approval to the proposed rule change, as modified by Amendment No. 1.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rules 3010 and 3012, with the intention of aligning certain supervisory control and inspection requirements with the corresponding supervisory control and inspection requirements in New York Stock Exchange (''NYSE'') Rule 342.19 and NYSE Interpretation Handbook provision 342(a)(b)/03. NASD is also proposing several amendments to NASD Rule 22510, relating to discretionary accounts, that NASD states are non-substantive and technical. The SEC approved these rules in their current form on June 17, 2004.[4] Below is the text of the proposed rule change, as modified by Amendment No. 1. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

2510. Discretionary Accounts

(a) through (c) No Change.

(d) Exceptions

This Rule shall not apply to:

(1) discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a security shall be executed, except that the authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent a specific, written contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretion exercised [for orders effected with or for] *in* an institutional account, as defined in Rule 3110(c)(4), pursuant to valid Good-Till-Cancelled instructions issued on a ''not-held'' basis. Any exercise of time and price discretion

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Patricia Albrecht, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 23, 2004 (''Amendment No. 1'').

[4] *See* Exchange Act Release No. 49883, 69 FR 35092 (June 23, 2004) (order approving NASD's proposed rule change); Exchange Act Release No. 49882 (June 17, 2004), 69 FR 35108 (June 23, 2004) (order approving NYSE's proposed rule change).

must be reflected on the [customer] order ticket.

(2) No Change.

* * * * *

3010. Supervision

(a) through (b) No change.

(c) Internal Inspections

(1) through (2) No change.

(3) An office inspection by a member pursuant to paragraph (c)(1) may not be conducted by the branch office manager or any person within that office who has supervisory responsibilities or by any individual who is *directly or indirectly* supervised by such person(s). However, if a member is so limited in size and resources that it cannot comply with this limitation (*e.g.,* a member [with] *has* only one office or a member with a business model where small or single-person offices report directly to an office of supervisory jurisdiction manager who is also considered the offices' branch office manager), the member may have a principal who has the requisite knowledge to conduct an office inspection perform the inspections. The member, however, must document in the office inspection reports the factors it has relied upon in determining that it is so limited in size and resources that it has no other alternative than to comply in this manner.

A member must have in place procedures that are reasonably designed to provide heightened office inspections if the person conducting the inspection reports to the branch office manager's supervisor or works in an office supervised by the branch manager's supervisor and the branch office manager generates 20% or more of the revenue of the business units supervised by the branch office manager's supervisor. For the purposes of this subsection only, the term ''heightened inspection'' shall mean those inspection procedures that are designed to avoid conflicts of interest that serve to undermine complete and effective inspection because of the economic, commercial, or financial interests that the branch manager's supervisor holds in the associated persons and business being inspected. In addition, for the purpose of this section only, when calculating the 20% threshold, all of the revenue generated by or credited to the branch office or the branch office manager shall be attributed as revenue generated by the business units supervised by the branch office manager's supervisor irrespective of a member's internal allocation of such revenue. A member must calculate the 20% threshold on a rolling, twelve-month basis.

(d) through (g) No Change.

* * * * *

3012. Supervisory Control System

(a) General Requirements

(1) No change.

(2) The establishment, maintenance, and enforcement of written supervisory control policies and procedures pursuant to paragraph (a) shall include:

(A) procedures that are reasonably designed to review and supervise the customer account activity conducted by the member's branch office managers, sales managers, regional or district sales managers, or any person performing a similar supervisory function.

(i) A person who is *either* senior to*, or otherwise independent of,* the producing manager must perform such supervisory reviews. *For purposes of this Rule, an ''otherwise independent'' person: may not report either directly or indirectly to the producing manager under review; must be situated in an office other than the office of the producing manager; must not otherwise have supervisory responsibility over the activity being reviewed (including not being directly compensated based in whole or in part on the revenues accruing for those activities); and must alternate such review responsibility with another qualified person every two years or less.* [However, if a member (i) does not conduct a public business, (ii) or has a capital requirement of $5,000 or less, or (iii) employs 10 or fewer representatives and, in the case of (i) through (iii), its business is conducted in a manner necessitated by a limitation of resources that includes fewer than two layers of supervisory personnel, a person in another office of the member who is in the same or similar position to the producing manager may conduct the supervisory reviews, provided that the person in the same or similar position does not have supervisory responsibility over the activity being reviewed, reports to his supervisor his supervision and review of the producing manager, and has not performed a review of the producing manager in the last two years.]

(ii) If a member is so limited in size and resources that *there is no qualified person senior to, or otherwise independent of, the producing manager to conduct the reviews pursuant to (i) above* [it cannot avail itself of this exception] (e.g., a member [with] *has* only one office or [a member with two offices and] an insufficient number of qualified personnel who can conduct reviews on a two-year rotation), [a member may have] *the reviews may be conducted by* a principal who is sufficiently knowledgeable of the member's supervisory control procedures[conduct these reviews]*, provided that the reviews are in compliance with (i) to the extent practicable.*

(iii) A member relying on (ii) above must document in its supervisory control procedures the factors used to determine that complete compliance with all of the provisions of (i) is not possible and that the required supervisory systems and procedures in place with respect to any producing manager comply with the provisions of (i) above to the extent practicable. [The member, however, must document in its supervisory control procedures the factors it has relied upon in determining that its size and the resources available to it are so limited that the member has no other alternative than to comply in this manner.]

(B) procedures that are reasonably designed to review and monitor the following activities:

(i) all transmittals of funds (e.g., wires or checks, etc.) or securities from customers [and] *to* third party accounts (i.e., a transmittal that would result in a change of beneficial ownership); from customer accounts to outside entities (e.g., banks, investment companies, etc.); from customer accounts to locations other than a customer's primary residence (e.g., post office *box*, ''in care of'' accounts, alternate address, etc.); and between customers and registered representatives, including the hand-delivery of checks;

(ii) through (iii) No change.

The policies and procedures established pursuant to paragraph (a)(2)(B) must include a means or method of customer confirmation, notification, or follow-up that can be documented. If a member does not engage in all of the activities enumerated above, the member must identify those activities in which it does not engage in its written supervisory control policies and document in those policies and procedures that additional supervisory policies and procedures for such activities must be in place before the member can engage in them; and

(C) procedures that are reasonably designed to provide heightened supervision over the activities of each producing manager who is responsible for generating 20% or more of the revenue of the business units supervised by the producing manager's supervisor. For the purposes of this subsection only, the term ''heightened supervision'' shall mean those supervisory procedures that evidence supervisory activities that are designed to avoid conflicts of interest that serve to undermine complete and effective supervision because of the economic, commercial, or financial

interests that the supervisor holds in the associated persons and businesses being supervised. In addition, for the purpose of this section only, when calculating the 20% threshold, all of the revenue generated by or credited to the producing manager or the producing manager's office shall be attributed as revenue generated by the business units supervised by the producing manager's supervisor irrespective of a member's internal allocation of such revenue. A member must calculate the 20% threshold on a rolling, twelve-month basis.

(b) 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, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 17, 2004, the SEC approved proposed changes to NASD and NYSE rules generally requiring the establishment, maintenance, and testing of supervisory control procedures; enhanced inspection procedures; documentation and recordkeeping procedures for account name/designation changes; limitations on holding customer mail; and one-day limit on time and price discretionary authority for retail customer orders.[5] NASD's and NYSE's new requirements are substantially similar. NASD believes that similarity between the rules should be enhanced by conforming certain inspection and supervisory control requirements in NASD Rules 3010 and 3012 to the corresponding requirements in NYSE Rule 342.19 and NYSE Interpretation Handbook provision 342(a)(b)/03, as well as certain provisions relating to discretionary accounts in NASD Rule 2510(d) to the corresponding provisions in NYSE Rule 408(d).

(a) NASD Rule 3010(c) (Internal Inspections)

NASD Rule 3010(c)(3) prohibits a branch office manager, any person within that office who has supervisory responsibilities, or any individual who is supervised by such person from conducting an office inspection. In comparison, according to NASD, NYSE Interpretation Handbook provision 342(a)(b)/03 (Annual Branch Office Inspection) specifies that any person who directly or indirectly reports to the branch office manager is prohibited from conducting an office inspection. NASD proposes to revise Rule 3010(c)(3) similarly to specify that any individual who directly or indirectly supervised by the branch office manager is prohibited from conducting an office inspection.

(b) NASD Rule 3012 (Supervisory Control System)

NASD Rule 3012(a)(2)(A) requires members' supervisory control policies and procedures to include procedures that are ''reasonably designed to review and supervise the customer account activity conducted by the member's branch office managers, sales managers, regional or district sales mangers, or any person performing a similar supervisory function.''[6] Currently, with two limited exceptions discussed below, the rule permits only a person who is senior to the producing manager to perform supervisory reviews of customer account activity conducted by the managers discussed in the rule (*i.e.,* ''producing manager'').

NASD Rule 3012(a)(2)(A) provides a limited exception from the ''senior to'' requirement if a member has fewer than two layers of supervisory personnel and (i) does not conduct a public business, (ii) has a capital requirement of $5,000 or less, or (iii) employs 10 or fewer representatives. Members meeting these conditions may assign supervisory reviews to a person in another office who is in the same or similar position to the producing manager being reviewed (the ''first exception'').[7]

NASD Rule 3012(a)(2)(A) further provides that if a member is so limited in size and resources that it cannot meet even the conditions enumerated in the first exception, the member may assign a principal to conduct supervisory reviews (the ''second exception'').[8] Under NASD Rule 3012(a)(2)(A), a member relying on the second exception must document the factors it has relied upon in determining that its size and resources are so limited that it has no other alternative but to comply in this manner.[9]

1. Review of Producing Manager's Customer Account Activity

NASD is proposing changes to its general standard for supervisory reviews to provide that the person reviewing a producing manager's customer account activities may be ''either senior to or otherwise independent of,'' rather than merely senior to, that producing manager. This proposed modification is intended to make NASD Rule 3012(a)(2)(A) more similar to NYSE Rule 342.19. For purposes of proposed NASD Rule 3012, an ''otherwise independent'' person may not report either directly or indirectly to the producing manager under review, must be situated in an office other than the office of the producing manager, must not otherwise have supervisory responsibility over the activity being reviewed (*i.e.,* may not be directly compensated based in whole or in part on the revenues accruing from the activity being reviewed), and must alternate such review responsibility with another qualified person every two years or less.

Under NASD Rule 3012(a)(2)(C), members must establish, maintain, and enforce heightened supervisory procedures over activities of each producing manger who generates 20% or more of the revenue of the business units supervised by the producing manager's supervisor (a ''20% producing manager''). NASD notes that the review of a producing manager's activities by an ''otherwise independent'' person would not obviate the need for heightened supervisory procedures if such procedures otherwise apply under NASD Rule 3012(a)(2)(C).[10]

[5] *See* Exchange Act Release No. 49883 (June 17, 2004, 69 FR 35092 (June 23, 2004) (order approving NASD's proposed rule change); Exchange Act Release No. 49882 (June 17, 2004); 69 FR 35108 (June 23, 2004) (order approving NYSE's proposed rule change).

[6] NASD Rule 3012(a)(2)(A).

[7] Such a person assigned may not have supervisory responsibility over the activity being reviewed, must report to his supervisor his supervision and review of the producing manager, and may not have performed a review of the producing manager in the last two years.

[8] Such a principal must be sufficiently knowledgeable of the member's supervisory control procedures.

[9] In comparison, according to NASD, NYSE Rule 342.19 requires that a member relying on the corresponding NYSE exception for members of limited size and resources must document the factors used to determine that (i) complete compliance with all of the provisions of NYSE's general standard for supervisory reviews of customer account activity is not possible, and (ii) the member's supervisory systems and procedures comply with the standard to the extent possible.

[10] Examples of ''heightened supervisory procedures'' are discussed in Exchange Act Release No. 49883, 69 FR 35098, and include unannounced supervisory reviews and an increased number of

Moreover, as discussed above, an ''otherwise independent'' person may not be directly compensated based in whole or in part on the revenues accruing from the activities being reviewed. Therefore, a supervisor of a 20% producing manager would not be considered ''otherwise independent'' with respect to that producing manager, for purposes of NASD Rule 3012(a)(2)(A).

2. Exception for Firms With Limited Resources

To make NASD Rule 3012 more similar to NYSE Rule 342.19, NASD is proposing to eliminate the first exception to the ''senior to'' requirement in current NASD Rule 3012(a)(2)(A), in which a member that has fewer than two layers of supervisory personnel and (i) does not conduct a public business, (ii) has a capital requirement of $5,000 or less, or (iii) employs 10 or fewer representatives, may assign a person in the same or similar position to the producing manager to conduct supervisory reviews, under certain conditions. Instead, proposed NASD Rule 3012(a)(2)(A)(ii) provides that a member ''so limited in size and resources that there is no qualified person senior to, or otherwise independent of, the producing manager'' being reviewed may assign ''a principal who is sufficiently knowledgeable of the member's supervisory control procedures'' to conduct the supervisory reviews. An example of a member that could rely on this proposed exception is one that ''has only one office or an insufficient number of qualified personnel who can conduct reviews on a two-year rotation.'' [11] The proposed change is intended to provide NASD members with the same flexibility in structuring their supervisory review policies and procedures that NYSE members have.

NASD also is proposing to revise the current documentation requirements in NASD Rule 3012 for members that rely on the proposed exception so that the requirements are more similar to those of NYSE Rule 342.19. NASD members would be required to document in its supervisory control procedures the factors used to determine that complete compliance with the ''either senior to or otherwise independent'' standard is not possible, and that the procedures that are in place comply with the standard to the extent practicable. NASD believes that these documentation requirements will result in members providing in greater detail the factors relied upon in determining that they must use the exception rather than the general supervisory review standard, as well as how closely their policies and practices track the general requirements.

NASD has agreed to file a separate amendment to NASD Rule 3012, following the approval of the proposed exception and documentation requirements, to require that members inform NASD if they rely or intend to rely on the proposed exception.[12] Members would inform NASD through reports filed on a web-based reporting system or other automated electronic platform. This manner of reporting will allow NASD to collect the necessary information quickly and efficiently and provide the information to the Commission promptly, promote timeliness of amendments (*e.g.,* members' changes to their use of the proposed exception), and allow NASD Member Regulation to integrate the information for their purposes without having to process manually paper notifications. NASD estimates that it should take no more than one year from the date this filing is approved to construct and bring on-line this web-based system or other electronic platform. NASD intends to require its members to begin reporting their use of the exception when the reporting system is brought on-line.

Finally, NASD is proposing several changes to NASD Rule 3012 to enhance the readability of the rule. The first set of proposed changes would be made to an example NASD provides, in proposed NASD Rule 3012(a)(2)(A)(ii), of a member that may rely on the proposed exception. In particular, NASD is proposing to remove from the example members with two offices but with insufficient resources to rely on the general review procedure. In addition, NASD Rule 3012(a)(2)(B)(i), procedures pertaining to transmittals of funds, would be revised as follows: ''all transmittals of funds (*e.g.,* wires or checks, etc.) or securities from customers [and] *to* third party accounts * * * from customer accounts to locations other than a customer's primary residence (*e.g.,* post office *box* * * *).''

(c) NASD Rule 2510 (Discretionary Accounts)

NASD also is proposing to make certain changes to NASD Rule 2510 (Discretionary Accounts). Currently, NASD Rule 2510(d)(1) does not require written authorization for the exercise of time and price discretion beyond a day for orders effected ''*with or for* an institutional account,'' if such discretion is exercised pursuant to valid Good-Til-Cancelled instructions issued on a not-held basis. The proposal, intended to be non-substantive and to enhance the rule's readability, would change the words ''*with or for* an institutional account'' to ''*in* an institutional account.'' In addition, NASD is proposing to clarify that time and price discretion must be reflected on all order tickets.[13]

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD is proposing these requirements to ensure that its members have in place standards that are reasonably designed to prevent fraudulent and manipulative acts, thereby protecting investors and the public interest. In addition, in light of the nature and content of these particular rules, NASD believes that NASD's and the NYSE's rules in this area should be substantially similar.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD 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.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

NASD has requested that the Commission find good cause pursuant

supervisory reviews by different reviewers within a certain period of time.

[11] *See* Amendment No. 1 (proposing to change a one-year rotation condition, as proposed in the original filing, to a two-year rotation condition).

[12] *See* letter from Marc Menchel, Executive Vice President and General Counsel, to Catherine McGuire, Chief Counsel, Division of Market Regulation, Commission, dated September 28, 2004.

[13] This change would accomplished by deleting the word ''customer'' from the sentence ''Any exercise of time and price discretion must be reflected on the *customer* order ticket,'' and, as proposed in Amendment No. 1, by moving the sentence from the end of NASD Rule 2510(d)(2), where it currently appears, to the end of NASD Rule 2510(d)(1).

to section 19(b)(2) of the Act [14] for approving the proposed rule change as amended prior to the 30th day after publication in the **Federal Register**. After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NASD, in particular section 15A and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change is consistent with the requirements of section 15A(b)(6) [15] of the Act because it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. The Commission finds that NASD's proposal is designed to accomplish these ends by requiring NASD members to establish supervisory procedures for the monitoring of customer account activities that promote independent review of their employees to the extent practicable.

(A) *NASD Rule 3010(c) (Internal Inspections)*

The Commission believes that the NASD's proposal with respect to prohibiting any person who *directly or indirectly* reports to the branch office manager of the branch office being inspected should provide clearer guidance on who may perform internal inspections. The Commission believes that this clarification should address conflicts of interest and further the general purpose of promoting the detection and reporting of fraudulent activity in customer accounts, without imposing undue burdens on members.

(B) *NASD Rule 3012 (Supervisory Control System)*

NASD has proposed that persons ''either senior to or otherwise independent of'' a producing manager would be qualified to review and supervise the customer account activity conducted by that producing manager. In contrast, NASD Rule 3012 currently permits only persons senior to a producing manager to conduct such reviews.

The Commission believes that this proposed change will provide more flexibility for NASD members to conduct supervisory reviews of customer account activity consistent with that already provided to NYSE members under NYSE Rule 342.19. To the extent the rules of the NASD and NYSE are consistent, opportunities for regulatory arbitrage will be diminished, which should enhance compliance with more rigorous supervisory control procedures. We believe the ''otherwise independent'' standard as proposed by NASD contains adequate safeguards to limit the conflicts of interest of the person conducting the reviews, thereby preserving the integrity of those reviews. In this regard, to qualify as an ''otherwise independent'' person, the reviewer may not report either directly or indirectly to the producing manager under review, must be in an office other than that of the producing manager, and must not otherwise have supervisory responsibility over the activity being reviewed. Moreover, an ''otherwise independent'' person may not be directly compensated based in whole or in part on the revenues accruing from the activities being reviewed, and must alternate such review responsibility with another qualified person every two years or less.

In addition, NASD has proposed to revise the exceptions, intended only for members of limited size and resources, from compliance with the general standard for who may conduct supervisory reviews. In particular, NASD is proposing to amend NASD Rule 3012(a)(2)(A) to permit members ''so limited in size and resources that there is no qualified person senior to, or otherwise independent of, the producing manager,'' to appoint a principal to conduct supervisory reviews, provided that the reviews are in compliance with the general supervisory standard to the extend practicable. The principal must be sufficiently knowledgeable of the member's supervisory control procedures. The Commission believes that the proposal is consistent with the Act as an accommodation to the smallest NASD members that lack the resources to implement a full scale program to conduct supervisory reviews. Nevertheless, the Commission expects NASD to monitor carefully the use of this exception to be certain that only members for whom it is intended take advantage of it, and that this exception is not abused. In this regard, the Commission stresses the importance of the NASD's agreement to file an amendment to NASD Rule 3012, following the issuance of this Order, to require members to provide reports to NASD if they rely on or intend to rely on this proposed exception. At a minimum, such reports should provide the number of employees of each such member, the member's net capital, as well as its annual revenues, and would be made available by the NASD to the Commission or its staff upon request. The Commission believes that such a reporting system is essential to ensuring that the exception in NASD Rule 3012(a)(2)(A)(ii) is used only by those firms for which it is intended (*i.e.,* those with very limited resources).

Finally, NASD has proposed to revise the documentation standards a member must satisfy when it relies on NASD Rule 3012(a)(2)(A)(ii), as proposed. Under the proposal, a member relying on this exception must document the factors used to determine that complete compliance with all of the provisions of the ''either senior to or otherwise independent of'' standard is not possible, and that the member's supervisory systems and procedures comply with this standard to the extent practicable. The Commission believes that NASD's proposed documentation requirement, in addition to the reports discussed above, should help to ensure that this exception is not abused or used by members other than those for which it is intended.

(C) *NASD Rule 2510(d) (Discretionary Accounts)*

The Commission believes that the proposed changes to NASD Rule 2510(d) are consistent with the Act. They generally improve the readability of the rule and clarify that any exercise of time and price discretion must be reflected on all order tickets.

(D) *Accelerated Approval*

The Commission believes that there is good cause for approving the proposed rule change and Amendment No. 1 prior to the 30th day after publication in the **Federal Register**. The proposed rule change is amending rules that were approved on June 17, 2004, which currently have an effective date of December 17, 2004.[16] Pursuant to the NASD's request, the effective date of January 31, 2005 will apply to the proposed rule change, as modified by Amendment No. 1, as well as to the amendments made to NASD Rules 2510, 3010, 3012, 3110, and IM 3110 that the Commission approved in June 2004.[17] Accelerated approval of this proposed rule change and Amendment No. 1 will enable NASD to announce promptly the final rules, as modified, thereby lessening member confusion as to the final requirements of NASD Rules 3010 and 3012 and permitting members to make the necessary changes to comply with them. Based on the above, the Commission finds good cause, consistent with section 15A(b)(6) and section 19(b)(2) of the Act, for approving the proposed rule change and Amendment No. 1 prior to the 30th day

[14] 15 U.S.C. 78s(b)(2).

[15] 15 U.S.C. 78o–3(b)(6).

[16] *See* Exchange Act Release No. 49883, 69 FR 35092 (June 23, 2004) (order approving NASD's proposed rule change).

[17] *See* Amendment No. 1.

after the date of publication of notice of filing thereof in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change as amended 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–NASD–2004–116 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–116. This rule number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. 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–NASD–2004–116 and should be submitted on or before October 27, 2004.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–2004–116), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–22441 Filed 10–6–04; 8:45 am]

BILLING CODE 8010–01–M

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50475; File No. SR-NSX–2004–02]

Self-Regulatory Organizations; National Stock Exchange; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Anti-Money Laundering Compliance Programs

September 30, 2004.

I. Introduction

A. Filing Background

On March 5, 2004, National Stock Exchange (''NSX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change to establish NSX Rule 5.6, Anti-Money Laundering Compliance Program. The proposed rule change prescribes the minimum standards required for each member firm's anti-money laundering program. On August 9, 2004, NSX filed Amendment No. 1 to the proposed rule change.[3] On August 20, 2004, notice of the proposed rule change was published in the **Federal Register**.[4] The Commission received no comments on the proposal. For the reasons discussed below this order approves the proposed rule change.

B. USA PATRIOT Act

In response to the events of September 11, 2001, President Bush signed into law on October 26, 2001, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the ''PATRIOT Act'') to address terrorist threats through enhanced domestic security measures, expanded surveillance powers, increased information sharing and broadened anti-money laundering requirements.[5] The PATRIOT Act amends, among other laws, the Bank Secrecy Act, as set forth in Title 31 of the United States Code.[6] Certain provisions of Title III of the PATRIOT Act, also known as the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (''MLAA''), impose affirmative obligations on a broad range of financial institutions, including broker-dealers, specifically requiring the establishment of anti-money laundering monitoring and supervisory programs.

MLAA Section 352 requires all financial institutions (including broker-dealers) to establish anti-money laundering programs that include, at a minimum: (i) Internal policies, procedures and controls; (ii) the specific designation of an anti-money laundering compliance officer; (iii) an ongoing employee training program; and (iv) an audit function to test the anti-money laundering program.

The Commission has previously approved several other self-regulatory organizations' (''SROs'') proposals (including those of the NYSE and the NASD) to adopt rules requiring their members to establish anti-money laundering compliance programs with the minimum standards described above.[7] Proposed NSX Rule 5.6 involves similar requirements.

II. Description of the Proposed Rule Change

NSX proposes to establish NSX Rule 5.6, Anti-Money Laundering Compliance Program, which requires NSX members to establish and implement anti-money laundering compliance programs. These anti-money laundering compliance programs must be designed to comply with Section 352 of the PATRIOT Act. The proposed rule change prescribes the minimum standards required for each member firm's anti-money laundering program.

Under the proposal, NSX members must develop and implement an anti-money laundering compliance program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act, and the implementing regulations promulgated under that Act by the Department of Treasury. Each member's anti-money laundering program must be approved, in writing, by a member of its senior management. The anti-money

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] See letter from James C. Yong, Senior Vice President of Regulation and General Counsel, NSX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 9, 2004 (''Amendment No. 1'').

[4] Exchange Act Release No. 50198 (August 13, 2004), 69 FR 51739 (August 20, 2004).

[5] Pub. L. 107–56, 115 Stat. 272 (2001).

[6] 31 U.S.C. 5311, *et seq.*

[7] *See, e.g.*, Securities Exchange Act Release No. 45798 (April 22, 2002), 67 FR 20854 (April 26, 2002)(order approving SR–NASD–2002–10 and SR–NASD–2002–24).

laundering programs required under the proposed rule must establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under Section 5318(g) of the Bank Secrecy Act and the implementing regulations under that Act. The programs must also establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder. The programs must provide for independent testing for compliance to be conducted by member personnel or by a qualified outside party. The programs must also designate, and identify to the Exchange, a person or persons responsible for implementing and monitoring the day-to-day operations and internal controls of the program and provide prompt notification to the Exchange regarding any change in such designation. In addition, the programs must provide ongoing training for appropriate persons. The proposed rule also states that, in the event any of the provisions of the rule conflict with any of the provisions of another applicable SRO's rule requiring the development and implementation of an anti-money laundering compliance program, the provisions of the member's Designated Examining Authority (''DEA'') rule would apply.

III. Discussion and Commission Findings

The Commission finds, for the reasons set forth below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered national securities exchange,[8] and, in particular, with the requirements of Sections 6(b)(5)[9] of the Act. Section 6(b)(5) requires, among other things that the rules of a registered national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect o, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with these Sections of the Act. The Commission finds that the NSX has proposed a rule that accurately, reasonably, and efficiently implements the requirements of the PATRIOT Act as it applies to NSX members. Moreover, the Commission finds it appropriate and consistent with the Act for NSX members to follow the anti-money laundering rules of their DEAs to the extent those rules conflict with NSX's. The Commission believes that provision of the NSX rule implementing this approach will avoid confusion and enhance compliance for dual members.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposal SR–NSX–2004–02, as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2499 Filed 10–5–04; 8:45 am]

BILLING CODE 8010–01–P

[8] In approving these rules, the Commission has considered their impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3620]

State of Florida (Amendment #4)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective September 25, 2004, the above numbered declaration is hereby amended to include Manatee, Sarasota, and Suwannee as disaster areas due to damages caused by Hurricane Frances occurring on September 3, 2004, and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Madison in the State of Florida may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have previously been declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 3, 2004 and for economic injury the deadline is June 6, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 30, 2004.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–22490 Filed 10–5–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P056]

State of Georgia

As a result of the President's major disaster declaration for Public Assistance on September 24, 2004, and a notice from the Department of Homeland Security—Federal Emergency Management Agency dated September 27, 2004, the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Appling, Atkinson, Bacon, Baker, Ben Hill, Berrien, Bibb, Bleckley, Brantley, Brooks, Butts, Calhoun, Camden, Candler, Charlton, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Decatur, Dodge, Dooly, Dougherty, Echols, Elbert, Emanuel, Evans, Glynn, Grady, Greene, Hancock, Harris, Hart, Houston, Irwin, Jasper, Jeff Davis, Johnson, Jones, Lamar, Lanier, Laurens, Long, Lowndes, Macon, McIntosh, Monroe, Montgomery, Peach, Pike, Pulaski, Putnam, Rabun, Schley, Spalding, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Thomas, Tift, Toombs, Treutlen, Turner, Twiggs, Upson, Ware, Wayne, Washington, Webster, Wheeler, Wilcox, Wilkes, Wilkinson, and Worth Counties in the State of Georgia constitute a disaster area due to damages caused by Tropical Storm Frances occurring on September 3, 2004 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 23, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Non-profit organizations without credit available elsewhere	2.900
Non-profit organizations with credit available elsewhere	4.875

The number assigned to this disaster for physical damage is P05608.

(Catalog of Federal Domestic Assistance Program Nos. 59008.)

Dated: September 28, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–22383 Filed 10–5–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3629]

State of Georgia (Corrected Copy)

As a result of the President's major disaster declaration on September 18, 2004, I find that Carroll, Cherokee, Cobb, Dawson, DeKalb, Early, Franklin, Fulton, Gilmer, Madison, Rabun, Towns, Union, and White Counties in the State of Georgia constitute a disaster area due to damages caused by Hurricane Ivan occurring on September 14, 2004, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 17, 2004, and for economic injury until the close of business on June 20, 2005, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Baker, Banks, Bartow, Calhoun, Clarke, Clay, Clayton, Coweta, Douglas, Elbert, Fannin, Fayette, Forsyth, Gordon, Gwinnett, Habersham, Hall, Haralson, Hart, Heard, Henry, Jackson, Lumpkin, Miller, Murray, Oglethorpe, Paulding, Pickens, Rockdale, Seminole and Stephens in the State of Georgia; Cleburne, Henry, Houston and Randolph counties in the State of Alabama; Oconee county in the State of South Carolina; Cherokee, Clay, Jackson and Macon counties in the State of North Carolina.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.375
Homeowners Without Credit Available Elsewhere	3.187
Businesses With Credit Available Elsewhere	5.800
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	2.900
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	4.875
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	2.900

The number assigned to this disaster for physical damage is 362908. For economic injury the number is 9ZX900 for Georgia; 9ZY100 for Alabama; 9ZY200 for South Carolina; and 9ZY300 for North Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 1, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–22491 Filed 10–5–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3628]

State of North Carolina (Amendment #1)

In accordance with notices received from the Department of Homeland Security—Federal Emergency Management Agency—effective September 23 and 27, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning September 16, 2004, and continuing through September 23, 2004. The declaration is also amended to include Alamance, Alleghany, Ashe, Caswell, Davidson, Forsyth, Graham, Guilford, Randolph, Rockingham, Stokes, Swain, and Wilkes Counties as disaster areas due to damages caused by Hurricane Ivan.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Chatham, Davie, Iredell, Montgomery, Moore, Orange, Person, Rowan, Stanly, Surry, and Yadkin in the State of North Carolina; Blount, Monroe, and Sevier Counties in the State of Tennessee; and Grayson, Halifax, Henry, Patrick, and Pittsylvania Counties in the Commonwealth of Virginia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have previously been declared.

The economic injury disaster number assigned to Virginia is 9AD400.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 17, 2004 and for economic injury the deadline is June 20, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 29, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–22426 Filed 10–5–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3623]

State of North Carolina (Amendment #3)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective September 27, 2004, the above numbered declaration is hereby amended to include Alleghany, Ashe, and Wilkes Counties as disaster areas due to damages caused by Tropical Storm Frances occurring on September 7, 2004, and continuing through September 12, 2004.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Surry in the State of North Carolina; and Grayson County in the Commonwealth of Virginia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have previously been declared.

The economic injury disaster number assigned to Virginia is 9AD500.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 9, 2004 and for economic injury the deadline is June 10, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 29, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–22427 Filed 10–5–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P054]

State of South Carolina

As a result of the President's major disaster declaration for Public Assistance on September 15, 2004 the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Berkeley, Charleston and Williamsburg Counties in the State of South Carolina

constitute a disaster area due to damages caused by Tropical Storm Gaston occurring on August 28–30, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 15, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations without credit available elsewhere	2.900
Non-Profit Organizations with credit available elsewhere	4.875

The number assigned to this disaster for physical damage is P05408.

(Catalog of Federal Domestic Assistance Program Nos. 59008).

Dated: September 28, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–22381 Filed 10–5–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P055]

State of Vermont

As a result of the President's major disaster declaration for Public Assistance on September 23, 2004 the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Addison, Caledonia, Chittenden, Franklin, Lamoille, Orleans, and Windham Counties in the State of Vermont constitute a disaster area due to damages caused by severe storms and flooding occurring on August 12, 2004 and continuing through September 12, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 22, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage	
Non-profit organizations without credit available elsewhere	2.900
Non-profit organizations with credit available elsewhere	4.875

The number assigned to this disaster for physical damage is P05506.

(Catalog of Federal Domestic Assistance Program Nos. 59008.)

Dated: September 28, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–22382 Filed 10–5–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3633]

State of West Virginia (Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective September 27, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning September 16, 2004, and continuing through September 27, 2004.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is November 19, 2004 and for economic injury the deadline is June 20, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 29, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–22428 Filed 10–5–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4853]

Culturally Significant Objects Imported for Exhibition Determinations: ''Robert Bechtle: A Retrospective''

AGENCY: Department of State.

ACTION: Notice.

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 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Robert Bechtle: A Retrospective,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the San Francisco Museum of Modern Art, from on or about February 12, 2005, until on or about June 5, 2005, at the Modern Art Museum of Forth Worth from on or about June 26, 2005 until on or about August 28, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, (telephone: (202) 619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 28, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–22473 Filed 10–5–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4819]

Notice of Declaration of Foreign Countries as Reciprocating Countries for the Enforcement of Family Support (Maintenance) Obligations

AGENCY: Office of the Legal Adviser, U.S. Department of State.

This notice amends and supplements Department of State Public Notice 4191, 67 FR 71605–06 (December 2, 2002).

Section 459A of the Social Security Act (42 U.S.C. 659A) authorizes the Secretary of State with the concurrence of the Secretary of Health and Human Services to declare foreign countries or their political subdivisions to be reciprocating countries for the purpose of the enforcement of family support obligations if the country has established or has undertaken to establish procedures for the establishment and enforcement of duties of support for residents of the United States. These procedures must be in

substantial conformity with the standards set forth in the statute. The statutory standards are: establishment of child support orders, including the establishment of paternity if necessary to establish the order; enforcement of child support orders, including collection and distribution of payments under such orders; cost-free services (including administrative and legal services, as well as paternity testing; and the designation of an agency as Central Authority to facilitate enforcement.

Once such a declaration is made, support agencies in jurisdictions of the United States participating in the program established by Title IV–D of the Social Security Act (the IV–D program) must provide enforcement services under that program to such reciprocating countries as if the request for service came from a U.S. state.

The declaration authorized by the statute may be made ''in the form of an international agreement, in connection with an international agreement or corresponding foreign declaration, or on a unilateral basis.'' The Secretary of State has authorized either the Legal Adviser or the Assistant Secretary for Consular Affairs to make such a declaration after consultation with the other.

As of this date, the following countries (or Canadian provinces or territories) have been designated foreign reciprocating countries:

Country	Effective date
Australia	May 21, 2001.
Czech Republic	May 3, 2000.
Ireland	Sept. 10, 1997.
Netherlands	May 1, 2002.
Norway	June 10, 2002.
Poland	June 14, 1999.
Portugal	Mar. 17, 2001.
Slovak Republic	Feb. 1, 1998.
Switzerland	Sept. 30, 2004.
Canadian Provinces or Territories:	
Alberta	Sept. 4, 2002.
British Columbia	Dec. 15, 1999.
Manitoba	July 11, 2000.
New Brunswick	Feb. 1, 2004.
Northwest Territories	Feb. 7, 2004.
Nunavut	Jan. 20, 2004.
Newfoundland/Labrador	Aug. 7, 2002.
Nova Scotia	Dec. 18, 1998.
Ontario	Aug. 7, 2002.

Information

Each of these countries (or Canadian provinces or territories) has designated a Central Authority to facilitate enforcement and ensure compliance with the standards of the statute. Information relating to the designated Central Authorities, and the procedures for processing requests may be obtained by contacting the United States Central Authority for International Child Support, Department of Health and Human Services, Office of Child Support Enforcement (OCSE), 370 L'Enfant Promenade, SW., 4-East, Washington, DC 20447; phone (202) 401–5566, fax (202) 401–5539, e-mail *ocseinternational@acf.hhs.gov.*

Questions regarding this notice, the status of negotiations, declarations and agreements may be obtained by contacting Mary Helen Carlson at the Office of the Assistant Legal Adviser for Private International Law, Suite 203 South Building, 2430 E Street, NW., Washington, DC 20037–2851; phone (202) 776–8420, fax (202) 776–8482, e-mail *carlsonmh@state.gov.*

The law also permits individual states of the United States to establish or continue existing reciprocating arrangements with foreign countries when there has been no federal declaration. Many states have such arrangements with additional countries not yet the subject of a federal declaration. Information as to these arrangements may be obtained from the individual state IV–D Agency.

Jeffrey D. Kovar,

Assistant Legal Adviser for Private International Law, Department of State.

[FR Doc. 04–22472 Filed 10–5–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4852]

Department of State Performance Review Board Members (at Large Board)

In accordance with section 4314(c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95–454), the Executive Resources Board of the Department of State has appointed the following individuals to the Department of State Performance Review Board (At-Large): James L. Millette, Deputy Assistant Secretary, Bureau of Resource Management, Department of State; Susan Biniaz, Assistant Legal Advisor, Office of the Legal Advisor, Oceans Environment and Science, Department of State; Susan F. Burk, Deputy Assistant Secretary, Bureau of Nonproliferation, Department of State; Richard L. Greene, Deputy Assistant Secretary, Bureau of Population, Refugees and Migration, Department of State; Roberta S. Jacobson, Director, Office of Mexican Affairs, Bureau of Western Hemispheric Affairs, Department of State; Lawrence R. Baer, Dean, School of Professional and Area Studies, George P. Schultz National Foreign Affairs Training Center, Department of State.

Dated: September 30, 2004.

Ruth A. Whiteside,

Acting Director General of the Foreign, Service and Director of Human Resources, Department of State.

[FR Doc. 04–22460 Filed 10–5–04; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending September 24, 2004

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2004–19162.
Date Filed: September 20, 2004.
Parties: Members of the International Air Transport Association.
Subject: PTC12 NMS–AFR 0209/ PTC23 AFR–TC3 0244, dated 21 September 2004, Mail Vote 403—Resolution 010v—Special Passenger, Amending Resolution to/from Libya, Intended effective date: 1 November 2004.

Docket Number: OST–2004–19163.
Date Filed: September 20, 2004.
Parties: Members of the International Air Transport Association
Subject: PTC23 AFR–TC3 0238, dated 17 September 2004, Africa-South Asian Subcontinent Expedited Resolution 002d, for intended effect 1 November 2004 r1–r6; PTC23 AFR–TC3 0246, dated 21 September 2004, Africa-South Asian subcontinent Technical Correction to Memorandum PTC23 AFR–TC3 0238 Expedited Resolution 002d, for intended effect 1 November 2004; PTC23 AFR–TC3 0239, dated 17 September 17 2004, Africa-South Asian subcontinent Expedited Resolution 002c, for intended effect 15 January 2005 r7; PTC23 AFR–TC3 0240, dated 17 September 2004, Africa-South west Pacific Expedited Resolution 002o, for intended effective date 1 November 2004 r8; PTC23 AFR–TC3 0241, dated 17 September 2004; Africa-South West Pacific Expedited Resolution 002ee, for intended effective date 15 January 2004 r9; Intended effective date: 1 November 2004, 15 January 2005.

Docket Number: OST–2004–19164.
Date Filed: September 20, 2004.

Parties: Members of the International Air Transport Association.

Subject: PTC23 ME–TC3 0209, dated 17 September 2004, Middle East-South Asian Subcontinent Expedited Resolution 002z, for intended effective date 15 January 2005 r1; PTC23 ME–TC3 0210, dated 17 September 2004, Middle East-Japan, Korea Expedited Resolution 002qq, for intended effective date 15 January 2005 r2; PTC23 ME–TC3 0211, dated 17 September 2004, Middle East-Japan, Korea Expedited Resolution 085b, for intended effective date 31 March 2005 r3; Intended effective date: 15 January 2005, 31 March 2005.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–22502 Filed 10–5–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending September 24, 2004

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2004–19077–20.

Date Filed: September 22, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: N/A.

Description: Application of Delta Air Lines, Inc., requesting a certificate of public convenience and necessity to engage in scheduled foreign air transportation of persons, property and mail between the United States and the People's Republic of China. Delta also requests an allocation of seven (7) U.S.-China combination frequencies to fund its Atlanta-Beijing service.

Docket Number: OST–2004–19077–21.

Date Filed: September 22, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: N/A.

Description: Application of North American Airlines, Inc., requesting a temporary, experimental certificate of public convenience and necessity to provide scheduled foreign air transportation of persons, property and mail between the United States and the People's Republic of China, and allocation of seven weekly U.S. carrier combination frequencies to become effective March 25, 2005, and an additional seven frequencies to become effective March 2006.

Docket Number: OST–2004–19077–22.

Date Filed: September 22, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: N/A.

Description: Application of Hawaiian Airlines, Inc. requesting a certificate of public convenience and necessity to provide foreign air transportation of persons, property and mail to and from the United States and the People's Republic of China and frequencies (four per week) designating Hawaiian to the People's Republic of China to operate combination service between Honolulu, HI on the one hand and Shanghai, People's Republic of China on the other and points behind the gateway (Honolulu) in the United States, commencing service in 2006.

Docket Number: OST–2004–19077–26

Date Filed: September 22, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: N/A.

Description: Application of World Airways, Inc. (''World''), requesting a certificate of public convenience and necessity to engage in scheduled foreign air transportation of property and mail from a point or points in the United States, via intermediate points to a point or points in the People's Republic of China and beyond. World seeks the designation available for all-cargo services under the U.S.-China Air Transport Services agreement as of March 25, 2006.

Docket Number: OST–2004–19077–27.

Date Filed: September 22, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: N/A.

Description: Application of American Airlines, Inc., requesting a certificate of public convenience and necessity to engage in scheduled foreign air transportation of persons, property, and mail between points in the United States, on the one hand, and Shanghai, Guangzhou, Beijing, and two additional points in the People's Republic of China, on the other hand, either nonstop or via intermediate points. American Airlines, Inc. also requests an allocation of seven weekly U.S.-China combination frequencies. Finally, American Airlines, Inc. requests route integration with its other certifications and exemptions to conduct scheduled foreign air transportation of persons, property, and mail.

Docket Number: OST–2004–19077–28.

Date Filed: September 22, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: N/A.

Description: Application of Tradewinds Airlines, Inc. requesting (1) Issuance of certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of property and mail from a point in the United States, via intermediate points, to a point or points in the People's Republic of China open to scheduled international operations, and beyond; and (2) allocation of twelve (12) weekly all-cargo frequencies that become available March 25, 2006.

Docket Number: OST–2004–19077–29.

Date Filed: September 22, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: N/A.

Description: Application of Evergreen International Airlines, Inc. requesting a certificate of public convenience and necessity to engage in scheduled foreign air transportation of property and mail between a point or points in the United States, via intermediate points, and the co-terminal points of Beijing and Shanghai, China. Evergreen also seeks authority to integrate this authority with its existing certificate and exemption authority and to commingle traffic consistent with applicable aviation agreements. Further, Evergreen seeks the new designation to China available March 25, 2006 along with an allocation of seven weekly round trip frequencies available beginning on March 25, 2006.

Docket Number: OST–2004–19077–30.

Date Filed: September 22, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: N/A.

Description: Application of Gemini Air Cargo, Inc. requesting a certificate of convenience and necessity to operate scheduled foreign air transportation of

property and mail from a point or points in the United States, via intermediate points, to a point or points in the People's Republic of China open to scheduled international operations, and beyond. Gemini also seeks designation as the next U.S. scheduled all-cargo carrier to China and asks the Department to allocate to Gemini the twelve all-cargo frequencies that will be available on March 25, 2006.

Docket Number: OST–2004–19077–31.

Date Filed: September 22, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: N/A.

Description: Application of Continental Airlines, Inc. requesting a certificate of public convenience and necessity authorizing Continental to engage in scheduled foreign air transportation of persons, property and mail between New York/Newark and Beijing and Shanghai, an allocation of seven weekly U.S.-China frequencies in 2005 and seven additional frequencies in 2006 and authority to integrate this authority with Continental's other certificate and exemption authority and to grant such other relief as the public interest may require.

Docket Number: OST–2004–19077–32.

Date Filed: September 22, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: N/A.

Description: Application of Northwest Airlines, Inc. requesting: (1) An allocation of eight of the twelve all-cargo frequencies available to designated U.S. carriers effective March 25, 2006 under the recently amended aviation agreement between the United States and People's Republic of China (PRC); (2) a temporary, experimental certificate of public convenience and necessity authorizing Northwest to provide scheduled foreign air transportation of property and mail between a point or points in the United States, via any intermediate points, to a point or points in China open to scheduled international operations, and beyond to any points outside of China, with full traffic rights; and (3) authority to integrate Northwest's existing exemption and certificate authority with the new certificate authority sought herein.

Docket Number: OST–2004–19189–1.

Date Filed: September 22, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 13, 2004.

Description: Application of Centurion Air Cargo, Inc. requesting a certificate of public convenience and necessity, and to the extent necessary, designations, authorizing Centurion to engage in scheduled foreign air transportation of property and mail to and from the sixty-four countries listed herein that have concluded ''open skies'' aviation agreements or ''open skies'' all-cargo scheduled service amendments with the United States.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–22501 Filed 10–5–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

New Special Experimental Project (SEP–15) To Explore Alternative and Innovative Approaches to the Overall Project Development Process; Information

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA is establishing a new Special Experimental Project (SEP–15) to encourage tests and experimentation in the entire development process for transportation projects. SEP–15 is aimed specifically at increased project management flexibility, more innovation, improved efficiency, timely project implementation, and new revenue streams. The FHWA plans to use the lessons learned from SEP–15 to develop more effective approaches to project planning, project development, finance, design, construction, maintenance, and operations.

DATES: This new experimental project is being initiated on October 6, 2004.

FOR FURTHER INFORMATION CONTACT: *Division Offices:* A complete list of contact information for the FHWA Division Offices may be found at: *http://www.fhwa.dot.gov/keyfield/famc.htm. Headquarters:* Mr. Dwight Horne, Office of Program Administration (HIPA), (202) 366–0494 or Mr. L. Harold Aikens, Jr., Office of the Chief Counsel (HCC–30), (202) 366–0791, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.s.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.archives.gov/fedreg* and the Government Printing Office's Web page at *http://www.gpoaccess.gpo.gov/nara.*

Background

The Federal Highway Administration (FHWA) has long encouraged increased private sector participation in the project development, finance, design, construction, maintenance, and operations of highways and bridges. The private sector has expertise often not available to the public sector that can bring innovation, flexibility, and efficiencies to certain types of projects.

For some time, FHWA has conducted tests in the area of contracting practices under Special Experimental Project No. 14 (SEP–14)[1]. Many of these practices have facilitated greater private sector investment. Since its inception in 1990, SEP–14 has been successful in advancing over 300 projects, and due to SEP–14, a number of contracting practices previously considered experimental have become a regular part of the highway program, such as design-build, cost-plus-time bidding, lane rental, and the use warranties.

The FHWA has also encouraged innovations in the area of transportation financing. In 1994, Executive Order 12893, Principles for Federal Infrastructure Investment, established more cost-effective infrastructure investment as a priority for all Federal agencies. This Executive Order prompted more systematic analyses of the costs and benefits of proposed infrastructure investments, efficient management of infrastructure, greater private sector investment in infrastructure, and encouragement of more effective State and local programs. In response to that Executive Order, the U.S. Department of Transportation (U.S. DOT) and the FHWA undertook a major initiative in 1994 to promote and facilitate infrastructure investment.

This initiative was launched with the introduction of an experimental ''Test and Evaluation'' program, designated as TE–045, to solicit ideas from the States on a range of new financial strategies designed to stretch limited transportation dollars by creating new,

[1] SEP–14 was initiated on February 13, 1990, as a result of recommendations from a Transportation Research Board (TRB) task force formed to explore innovative contracting practices. The memorandum initiating the SEP–14 program can be found at the following URL: *http: www.fhwa.dot.gov/programadmin/contracts/021390.htm.*

more flexible ways to leverage Federal-aid highway funds. The TE–045 initiative has generated substantial benefits in terms of building more projects with fewer Federal dollars and accelerating project construction. Many of the innovations tested were subsequently approved for general use through administrative action or legislative changes made under the National Highway System Designation (NHS) Act of 1995 (Pub. L. 104–59; 109 Stat. 568; Nov. 28, 1995), and the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178; 112 Stat. 107; June 9, 1998).

More recently, an increasing number of States and private ventures have explored public-private partnerships in which the private sector partner could assume a greater role in project planning, project development, financing, construction, maintenance, and operation. Because these projects involve elements of project planning, development, environmental analysis, construction, maintenance, operation, and financing, they extend well beyond innovative contracting practices contemplated by SEP–14 and the financing tools encompassed by TE–045.

State interest in public private partnerships is expected to increase. Private sector investment can make up some of the public funding shortfall, but it will require a fair return on investment. Tolls certainly will represent a major source of funds to support private sector investment, but other potential sources of income such as development fees and tax increment financing may also be needed. These features often add to the complexity of project development.

Several States and private entities have asked for FHWA's guidance in implementing innovative arrangements and have queried how these new arrangements will be treated under Federal laws affecting highway projects. Some recent SEP–14 applications have sought to incorporate initiatives that go beyond innovative contracting, to include environmental compliance, right of way acquisition, and financing. These applications have been difficult to fit within the limits of SEP–14. Thus, rather than continue to manage these new proposals under the SEP–14 umbrella, FHWA is initiating a new Special Experimental Project No. 15 (SEP–15) pursuant to the authority granted the Secretary by Congress in 23 U.S.C. 502(b). SEP–15 will not be limited to contracting initiatives. It will encourage tests and experimentation in the entire project development process, specifically aimed at attracting private investment, leading to increased project management flexibility, more innovation, improved efficiency, timely project implementation, and new revenue streams.

A key element of SEP–15 will be to identify impediments in current laws, regulations, and practices to the greater use of public-private partnerships and private investment in transportation improvements and to develop procedures and approaches that address these impediments. Of course, such procedures and approaches must continue to protect the public interest and any public investment in the project. Moreover, SEP–15 projects cannot be used to modify environmental and other requirements external to title 23 of the United States Code. Thus, SEP–15 will allow for innovations in project delivery while maintaining FHWA's stewardship responsibilities to protect taxpayers and the environment. The FHWA recognizes that SEP–15 proposals may include multi-modal components. The FHWA will coordinate the review of multi-modal SEP–15 proposals with the appropriate modal administration(s).

The lessons learned from SEP–15 will aid FHWA in developing more effective approaches to project planning, project development, finance, design, construction, maintenance, and operations. Our goal is to establish comprehensive policies and to seek future legislation to authorize those public-private innovations that have proved most useful under SEP–15.

SEP–15

As personal and freight transportation needs continue to increase, public resources will fall behind the demand for investment in transportation infrastructure. It is unrealistic to assume that sufficient funding to meet this demand can be realized by increasing taxes or otherwise using only public funds. Additional funds must be obtained from other sources, such as drawing from private sector financing and investment. SEP–15 will allow FHWA to test project development approaches that provide the flexibility and timely decision-making often required to attract private capital while still exercising essential FHWA stewardship responsibilities.

As a result, the FHWA is seeking to identify changes in current practices that could promote greater and more effective private sector involvement in the delivery of Federal-aid construction projects. Partnerships between private investors and public transportation agencies can bring not only greater funding to a project but also more intellectual capital and innovation. SEP–15 is designed to provide a mechanism by which States can facilitate public-private partnerships.

The objective of SEP–15 is to identify for trial evaluation and documentation public-private partnership approaches that advance the efficient delivery of transportation projects while protecting the environment and the taxpayers. SEP–15 addresses four major components of project delivery—contracting, compliance with FHWA's National Environmental Policy Act (NEPA) process and other environmental requirements, right-of-way acquisition, and project finance. Given the scope of some of the proposals that have surfaced, elements of the transportation planning process may be involved as well. In order to meet the objective of SEP–15, proposals should describe the specific Federal-aid program areas of experimentation and identify proposed performance measures to evaluate the success of the SEP–15 project.

Contracting

SEP–15 incorporates SEP–14's approach to innovative contracting practices. However, SEP–15 projects are likely to solicit conditional Federal approval earlier in the project development process than is typical for SEP–14 projects. Projects under SEP–14 usually have passed the initial concept stage. Hence, competition can occur around proposals for which cost parameters can be identified. Recently, the FHWA encountered a number of proposals that seek to involve the private sector even earlier in the process. Under these proposals, only generalized needs or policy initiatives that the project would serve have been identified.

For this reason, State applicants under SEP–15 should provide detail of the following:

(1) The procurement methods it will use over the life of the project to encourage adequate competition. Many of the proposals developed to date are an offshoot of the design-build concept. SEP–15 proposals need not be limited by these concepts. However, given the very long lead-time and the large scope that a SEP–15 project might involve, FHWA is concerned that adequate competition is maintained and that qualitative and quantitative (price) evaluation factors are considered at key stages of the project.

(2) Applicants should specify any title 23, U.S.C., and FHWA regulatory requirements that may have to be waived or modified in order to conduct a successful SEP–15 test, together with

a justification or explanation for the modification. Applicants should also describe how laws and other requirements that fall outside title 23, U.S.C., and thus cannot be waived under SEP–15, would be affected by proposed changes in standard procedure. This includes not only the environmental laws discussed in the following section, but other requirements external to title 23, U.S.C..

(3) Many of the controls imposed by title 23, U.S.C., and implementing requirements provide for oversight and control to protect the public interest. It is clear from the proposals the FHWA has seen to date that some of these controls have created real and unnecessary impediments to innovation and greater private investment. Thus, an applicant should be prepared to describe how it will ensure an appropriate level of public oversight and control, while also encouraging innovation and flexible, efficient procedures throughout the life of the project. The FHWA has no preconceived measures in mind. We are concerned about meeting quality standards, monitoring compliance with government-wide policies, contracting process requirements, and other stewardship responsibilities.

(4) The FHWA is particularly interested in proposals that can successfully accomplish the goals mentioned above. The FHWA has considerable authority under SEP–15 to test new ideas and is prepared to grant considerable flexibility if it is clear that its stewardship responsibilities can be met.

Applicants will be allowed maximum flexibility in determining their own procurement methods consistent with their State law but need to specify State requirements that cannot be waived.

Compliance with Environmental and Planning Laws

SEP–15 applicants must still fully comply with all requirements of NEPA and other State and Federal environmental and planning laws and regulations. These requirements include all metropolitan and statewide planning provisions related to local consultation, public involvement, and project selection. Successful applicants, however, may be provided flexibility in the application of FHWA's project development and NEPA implementation requirements, so long as there is verifiable compliance of the statutory requirements and regulations promulgated by agencies other than FHWA. Examples of innovation in the environmental area might include the following.

(1) The FHWA's design-build regulations (23 CFR Part 636) prohibit States from issuing a request for proposal (RFP) for a project prior to approval of the Record of Decision (ROD). This restriction would not necessarily apply under SEP–15. However, applicants will be responsible for demonstrating that any changes to the traditional timing of actions within the NEPA project development process and contracting for professional services, design and/or construction, will not influence the NEPA analysis. SEP–15 is not a blanket waiver of basic NEPA process requirements found in the Council on Environmental Quality (CEQ) Regulations (40 CFR Parts 1500–1508) or FHWA's Environmental Regulation (23 CFR Part 771). Applicants must also understand the risk of taking advantage of this flexibility. If more than preliminary design is performed for a specific alternative prior to the ROD or final NEPA document, that work may be lost if another specific alternative is chosen in the ROD. Under no circumstances may construction begin prior to completion of the NEPA process.

(2) Under current law, a successful applicant may allow a contractor to conduct environmental analysis and prepare NEPA documents. However, the State Department of Transportation (State DOT) in cooperation with FHWA must provide direction and oversight during the NEPA process and development of NEPA documents. In all cases, the State DOT in cooperation with FHWA will be responsible for demonstrating that NEPA documents are objective by carefully reviewing the document with in-house experts or consultant advisors hired by the State DOT. For SEP–15 projects, FHWA will maintain its role as the lead Federal agency and will independently review and evaluate the NEPA documents prior to taking an approval action.

(3) Proposals that are very large in scope or slated to be built over a long time period might benefit from a tiered environmental process. While such tiering has always been allowed, transportation agencies have not made extensive use of tiered environmental analyses.

(4) The scope and nature of some of the proposals present particular challenges for public involvement and interagency coordination and consultation. Applicants are encouraged to identify innovative ways to include the public and other agencies in various phases of planning and project development.

Improved coordination with resource agencies is a key element of the environmental streamlining provisions of TEA–21. These provisions also have been enhanced by Executive Order 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews.[2] Proposals that take advantage of these provisions in a creative manner could be particularly useful.

Right-of-Way Acquisition

Early acquisition of right-of-way, in spite of some risk, is a particularly useful tool to preserve transportation corridors from conflicting land uses. Also, early acquisition could influence land uses adjoining the potential corridor in a manner that is consistent with the ultimate transportation project and may even be appropriate to preserve the possibility of identified joint development initiatives. Thus, FHWA anticipates that timely land acquisition, or other land use control methods, could well be a part of a SEP–15 proposal.

Existing law provides project sponsors with an array of options to acquire right-of-way using both Federal and non-Federal funds. SEP–15 adds to that flexibility. For example, FHWA regulations currently discourage the award of a construction contract prior to acquisition of all necessary rights-of-way (ROW) (23 CFR 635.309). Environmentally neutral proposals that assure that landowners and tenants are receiving fair compensation, relocation assistance, and benefits guaranteed by the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (42 U.S.C. 4601 *et seq.*) could be eligible for modification of the ROW certification requirements, similar to the ROW phasing procedures under current design-build regulations.

Project Finance

Project financing for SEP–15 projects will likely come from a mix of Federal, State, local, and/or private funds. Building on the TE–045 initiative, SEP–15 will focus on financing innovations specifically associated with public-private partnerships. Existing Federal law already has a number of provisions that encompass a considerable range of financial arrangements.

The Transportation Infrastructure Finance and Innovative Act (TIFIA) program, (*http://tifia.fhwa.dot.gov/*), which facilitates a range of financing approaches, will continue to be a key element in FHWA's efforts to encourage

[2] E.O. 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews, issued on September 18, 2002, emphasizes the importance of expedited transportation project delivery while being good stewards of the environment.

the formation of public-private partnerships. This program is designed specifically to encourage greater leveraging of public transportation funds and attract private investment to transportation projects by providing credit assistance in the form of direct loans, loan guarantees, and standby lines of credit.

Little use has been made of the loan authority provided by 23 U.S.C. 129(a)(7). The FHWA welcomes proposals to use this ''129(a)(7)'' authority, which allows highway apportionments to be used for low cost loans to projects with dedicated revenue sources, as part of a three-way financing partnership between the State, the private venture partner, and the FHWA. By coupling ''129(a)(7) authority'' with TIFIA, tax-exempt bond financing, and Federal-aid grant funding as an integrated financing package, FHWA believes that this kind of partnership will serve as a catalyst for moving public-private partnerships quickly from concept to construction. When the State makes a 129(a)(7) loan to an eligible public or private entity, the State receives reimbursement from FHWA and is repaid the loan amount plus applicable interest by the borrower, which the State may then use for any eligible title 23 U.S.C. purpose; thus, assisting the State to establish a revolving loan fund for future projects.

The FHWA will devote the internal resources necessary to evaluate the financing package, offer alternative financing solutions, and establish financial feasibility in order to move the project from concept to commitment of Federal funds (where applicable) and construction.

Joint Development Agreements

In addition to the transportation project itself, significant benefit and revenue potential may be realized from joint use of the transportation facility. Thus, the ROW may be used both for transportation purposes and other uses that are compatible with the transportation use, such as airspace development. Even joint use of the airspace of Interstate and other limited access highways is favored, so long as the transportation purpose is not impaired. States are encouraged to enter into joint development agreements with private parties by current Federal law, 23 U.S.C. 156. Under this provision, if FHWA participates in the cost of acquiring real property needed for a proposed project, there are specific requirements that apply to the sale or lease of the real property acquired with Federal funds (such as air rights). These requirements may include such things as ensuring that the amount realized by sale or lease represents the fair market value of the interest at issue. The net realized must be dedicated to transportation purposes. Waivers of the requirement to charge the fair market value are available in limited circumstances.

Application Process

A State DOT should submit SEP–15 proposals to the appropriate FHWA Division Office. Proposals may include localities and private transportation ventures as project sponsors. SEP–15 applications should provide a brief description of the project, including the innovative techniques proposed and the expected value of those techniques.

Upon the completion of major milestones, the public-private sponsors will be responsible for submitting an independently prepared report that summarizes lessons learned from the SEP–15 process. These reports shall include the experiment undertaken, the lessons learned, evaluate the success of the process and its impact on the project, and recommend statutory and regulatory changes with an explanation of how the changes will improve the delivery of the Federal-aid highway program.

Conclusion

The Secretary has identified public-private partnerships as being an important element of the Department's ability to reduce congestion and maintain the highway system. To this end, SEP–15 is designed to encourage a broad range of innovations in project planning, project development, finance, design, construction, maintenance, and operations. This notice outlines some areas in which States may experiment and innovate in order to help provide some framework for experimentation. Project proponents applying under SEP–15, however, are encouraged to propose innovations in all areas of title 23, U.S.C.

(Authority: 23 U.S.C. 315 and 502).

Issued on: September 23, 2004.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 04–21975 Filed 10–5–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Senior Executive Service Departmental Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Departmental PRB. The purpose of this PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions for which the Secretary or Deputy Secretary is the appointing authority. These positions include SES bureau heads, deputy bureau heads and certain other positions. The Board will perform PRB functions for other key bureau positions if requested.

Composition of Departmental PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the PRB members are as follows:

Wayne A. Abernathy, Assistant Secretary (Financial Institutions); Rebecca A. Contreras, Deputy Assistant Secretary (Human Resources) and Chief Human Capital Officer; Jesus H. Delgado-Jenkins, Deputy Assistant Secretary (Management and Budget); John M. Duncan, Assistant Secretary (Legislative Affairs); James H. Fall III, Deputy Assistant Secretary (Technical Assistance Policy); Reese H. Fuller, Advanced Counterfeit Deterrence Program Director (Domestic Finance); Geraldine A. Gerardi, Director for Business Taxation; Donald V. Hammond, Fiscal Assistant Secretary; Ira L. Hobbs, Chief Information Officer; Gregory F. Jenner, Deputy Assistant Secretary (Tax Policy); Jeffrey F. Kupfer, Deputy Chief of Staff; Robert Nichols, Assistant Secretary (Public Affairs); Patricia J. Pointer, Deputy for Human Resources; Randal K. Quarles, Assistant Secretary (International Affairs); Brian C. Roseboro, Under Secretary (Domestic Finance); Mary Beth Shaw, Executive for DC Pensions Policy and Oversight; Christopher A. Smith, Chief of Staff; Juan C. Zarate, Assistant Secretary (Terrorist Financing); Marla A. Freedman, Assistant Inspector General for Audit, Office; William H. Pugh, Deputy Assistant Inspector General for Audit (Financial Management); Dennis S. Schindel, Deputy Inspector General; Arthur J. Libertucci, Administrator, Tax and Trade Bureau; John J. Manfreda, Deputy Administrator, Tax and Trade Bureau; Marcia H. Coates, Senior Advisor, United States Mint; Henrietta H. Fore, Director, United States Mint; Jerry W. Horton, Chief Information Officer, United States Mint; David A. Lebryk, Deputy Director, United States Mint; Nancy Coto Fleetwood, Assistant Commissioner, Information Resources, Financial Management Service; Richard L. Gregg, Commissioner, Financial Management Service; Scott Johnson, Assistant Commissioner, Management (Chief Financial Officer), Financial Management

Service; Kerry Lanham, Assistant Commissioner, Agency Services, Financial Management Service; Kenneth R. Papaj, Deputy Commissioner, Financial Management Service; Gregory D. Carper, Associate Director (Chief Financial Officer), Bureau of Engraving and Printing; Ronald W. Falter, Associate Director (Chief Information Officer), Bureau of Engraving and Printing; Thomas A. Ferguson, Director, Bureau of Engraving and Printing; Joel C. Taub, Associate Director (Management), Bureau of Engraving and Printing; Beverly O. Babers, Chief Human Capital Officer, Internal Revenue Service; Helen Bolton, Director, Management Services, Modernization and Information Technology Services, Internal Revenue Service; John M. Dalrymple, Deputy Commissioner for Operations Support, Internal Revenue Service; Cecil T. Hua, Director, Systems Engineering and Integration, Business Modernization and Information Technology Services, Internal Revenue Service; Henry O. Lamar, Commissioner, Wage and Investment Division, Internal Revenue Service; Deborah M. Nolan, Commissioner, Large and Mid-Sized Business Division, Internal Revenue Service; Kathy K. Petronchak, Director, Pre-Filing and Technical Guidance, Large and Mid-Sized Business Division, Internal Revenue Service; Evelyn A. Petschek, Chief of Staff, Internal Revenue Service; Estelle R. Tunley, Deputy Director, Submission Processing, Wage and Investment Division, Internal Revenue Service; Anne M. Meister, Deputy Commissioner, Bureau of the Public Debt; Frederick Van Zeck, Commissioner, Bureau of the Public Debt; James W. Carroll, Deputy General Counsel; Roberta K. McInerney, Assistant General Counsel (Banking & Finance); Kenneth R. Schmalzbach, Assistant General Counsel (General Law & Ethics); Carol A. Campbell, Division Counsel, Wage and Investment; Edward L. Patton, Deputy Associate Chief Counsel; William F. Baity, Deputy Director, Financial Crimes Enforcement Network. Additional Member: William J. Fox, Director, Financial Crimes Enforcement Network.

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Dennis Cannon, Department of the Treasury, Director, Human Resources Strategy and Solutions, 1500 Pennsylvania Avenue, NW., Attention: Suite 12105, 1750 Pennsylvania Avenue, NW., Washington, DC 20220, telephone: (202) 622–1109.

This notice does not meet the Department's criteria for significant regulations.

Dennis Cannon,

Director, Human Resources Strategy and Solutions.

[FR Doc. 04–22429 Filed 10–5–04; 8:45 am]

BILLING CODE 4811–16–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Lending and Investment

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before December 6, 2004.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from William Magrini, Senior Project Manager, Supervision Policy, (202) 906–5744, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Lending and Investment.

OMB Number: 1550–0078.

Form Number: N/A.

Regulation requirement: 12 CFR parts 560 and 564; and §§ 562.1, 563.41, 563.170, and 590.4.

Description: This information collection requires savings associations to maintain adequate documentation to support their lending and investment activities. OTS staff may request the information during examinations.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 902.

Estimated Frequency of Response: Event-generated.

Estimated Total Burden: 327,968 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark D. Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: September 30, 2004.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Deputy Director.

[FR Doc. 04–22380 Filed 10–5–04; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee for CARES Business Plan Studies; Notice of Establishment

As required by section 9(a)(2) of the Federal Advisory Committee Act, the

Department of Veterans Affairs (VA) hereby gives notice of the establishment of the Advisory Committee for CARES Business Plan Studies. The Secretary of Veterans Affairs has determined that establishing the Committee is both necessary and in the public interest.

The Committee will continue the Capital Asset Realignment for Enhanced Services (CARES) process by providing site-specific advice as the process moves into its implementation phase. Thus far, the CARES process has included a February 2004 report by the CARES Commission, a federal advisory committee that conducted 38 public hearings and 81 site visits in 2003, and the Secretary's CARES Decision in May 2004 (based largely upon recommendations in the CARES Commission report).

The Secretary's CARES Decision identified implementation issues that required further study, to include additional stakeholder input, at selected sites. The Committee will fulfill the pledge to consult with stakeholders at those sites during implementation of the Secretary's CARES Decision. The Committee will ensure that the full range of stakeholder interests and concerns are assembled, publicly articulated, accurately documented, and considered in the development of site-level business plans.

Subcommittees will be established to perform duties and functions within the Committee's purview. The Committee or designated subcommittee will collect and consider stakeholder input related to the development and selection of business plans at the 21 sites designated for further study by the Secretary's CARES Decision in May 2004. The Committee or designated subcommittee will provide advice on proposed business plans or alternative business plans to be considered, and may relay any general concerns that the Department should consider during CARES implementation.

The Committee or designated subcommittee will hold public meetings at each site to seek stakeholder input. In addition to the public meetings, the Committee or designated subcommittee will gather stakeholder input through other means, such as advertising and Web site communications.

The Committee and its subcommittees may consist of representatives from veterans service organizations, governmental agencies, health care providers, planning agencies, and community organizations with a direct interest in the CARES process. The Committee and its subcommittees are expected to carry out their functions through December 2005.

Dated: September 29, 2004.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–22440 Filed 10–5–04; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Office of Research and Development

Government Owned Invention Available for Licensing

AGENCY: Office of Research and Development.

ACTION: Notice of government owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 and/or CRADA Collaboration under 15 U.S.C. 3710a to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Mindy L. Aisen, M.D., Department of Veterans Affairs, Acting Director Technology Transfer Program, Office of Research and Development, 810 Vermont Avenue, NW., Washington, DC 20420; fax: 202–254–0473; e-mail at: *mindy.aisen@mail.va.gov.* Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is:

U.S. Patent Application No. 10/324,374 ''Method of Predicting Cytokine Response to Tissue Injury''.

Dated: September 27, 2004.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 04–22435 Filed 10–5–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's Office of General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. They are being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretations regarding the legal matters at issue.

FOR FURTHER INFORMATION CONTACT: Susan P. Sokoll, Law Librarian, Department of Veterans Affairs (026H), 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–6558.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(8) and 14.507 authorize the Department's Office of General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under the laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel, which must be, followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above or by accessing them on the Internet at *http://www1.va.gov/OGC/.*

VAOPGCPREC 4–2004

Question Presented: How can the Department of Veterans Affairs (VA) reconcile the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Moody* v. *Principi,* 360 F.3d 1306 (Fed. Cir. 2004), and law on claims alleging clear and

unmistakable error (CUE) in final VA decisions?

Held: For a final Department of Veterans Affairs (VA) or Board of Veterans' Appeals decision to be reversed or revised under 38 U.S.C. 5109A or 7111 (clear and unmistakable error) on the ground that VA failed to recognize a claim for veterans benefits, it must be concluded that: (1) It is obvious or undebatable that, when prior filings are construed in the claimant's favor, the pleadings constitute an earlier claim for the veterans benefit that was subsequently awarded by VA; and (2) VA's failure to recognize that claim manifestly affected the subsequent award of benefits. VAOPGCPREC 12–2001 is hereby superseded by this opinion.

Effective Date: May 28, 2004.

VAOPGCPREC 5–2004

Question Presented:

A. Does 38 U.S.C. 5103(a) require the Department of Veterans Affairs (VA) to provide notice of any information and evidence necessary to substantiate a claim where the claim cannot be substantiated under the law or based on the application of the law to undisputed facts?

B. Does 38 U.S.C. 5103A require VA to assist a claimant in obtaining evidence where the claim cannot be substantiated under the law or based on the application of the law to undisputed facts?

Held:

A. Under 38 U.S.C. 5103(a), the Department of Veterans Affairs (VA) is not required to provide notice of the information and evidence necessary to substantiate a claim where that claim cannot be substantiated because there is no legal basis for the claim or because undisputed facts render the claimant ineligible for the claimed benefit.

B. Under 38 U.S.C. 5103A, VA is not required to assist a claimant in developing evidence to substantiate a claim where there is no reasonable possibility that such aid could substantiate the claim because there is no legal basis for the claim or because undisputed facts render the claimant ineligible for the claimed benefit.

Effective Date: June 23, 2004.

VAOPGCPREC 6–2004

Question Presented:

A. Is the determination of the character of discharge of a National Guard member who seeks disability compensation for an injury incurred during active duty for training (ADT) based only on discharge or release from the ADT period or must the determination be based on the member's discharge from the entire period of service in the National Guard?

B. If the character of a National Guard member's discharge is based on the member's discharge from the entire period of service in the National Guard, must the Department of Veterans Affairs reconsider an award of disability compensation made before the member separated from the National Guard if, at the time the member is separated from the National Guard, the member's discharge is characterized as less than honorable?

Held:

A. When an individual applies for benefits based on an injury incurred during active duty for training (ADT) while in the National Guard, the Department of Veterans Affairs must determine under 38 CFR 3.12 whether the individual was discharged or released from the ADT period under conditions other than dishonorable.

B. If VA has awarded disability compensation to an individual based on a disability incurred in a period of ADT while the individual was in the National Guard and the individual is subsequently discharged from the National Guard under other than honorable conditions, VA need not reconsider the earlier award unless the facts underlying the subsequent discharge specifically relate to the ADT period and suggest that the earlier determination regarding character of discharge or release was clearly and unmistakably erroneous.

Effective Date: July 12, 2004.

VAOPGCPREC 7–2004

Question Presented: What did the United States Court of Appeals for Veterans Claims hold in *Pelegrini* v. *Principi*, No. 01–944, 2004 WL 1403714 (Vet. App. June 24, 2004), regarding the Department of Veterans Affairs' obligation to provide notice pursuant to 38 U.S.C. 5103(a)?

Held: The only holdings in *Pelegrini* v. *Principi*, No. 01–944, 2004 WL 1403714 (Vet. App. June 24, 2004), regarding the obligation of the Department of Veterans Affairs (VA) to provide notice pursuant to 38 U.S.C. 5103(a) are the following:

1. Section 5103(a) of title 38, United States Code, and § 3.159(b)(1) of title 38, Code of Federal Regulations, generally require that a claimant for service connection be provided notice before an initial unfavorable decision by a VA agency of original jurisdiction (AOJ).

2. Section 5103(a) of title 38, United States Code, and 38 CFR 3.159(b)(1) apply to Mr. Pelegrini's claim, which the AOJ had denied before November 9, 2000, but which was still pending before VA on that date.

3. A VA AOJ did not err by not providing notice that complies with 38 U.S.C. 5103(a) prior to the initial denial of Mr. Pelegrini's claim before the date on which the statute was enacted.

4. If the United States Court of Appeals for Veterans Claims (CAVC) remands a case for VA to provide notice consistent with 38 U.S.C. 5103(a) and 38 CFR 3.159(b)(1) (notice that informs the claimant of any information and evidence not of record that is necessary to substantiate the claim, indicates which party is responsible for obtaining which portion of such evidence, and requests that the claimant provide any evidence in the claimant's possession that pertains to the claim), the Board must ensure that complying notice is provided unless the Board makes findings regarding the completeness of the record or as to other facts that would permit the CAVC to conclude that the notice error was harmless, including an enumeration of all evidence now missing from the record that must be part of the record for the claimant to prevail on the claim.

Effective Date: July 16, 2004.

VAOPGCPREC 8–2004

Question Presented:

(a) Does the age limitation for payment of chapter 35 benefits contained at 38 CFR 21.3040(d) and 21.304(d) apply to the exception to the basic eligibility period for receipt of chapter 35 benefits contained at 38 U.S.C.A. 3512(a)(3)?

(b) What is the effect of revision of a rating under 38 CFR 3.105(a) as regards the period of eligibility for chapter 35 benefits? Did VA ''first find'' the veteran in this case permanently and totally disabled in November 1999, when the corrected decision was made, or in August 1986, which was the effective date under 38 CFR 3.400(k) for that rating?

Held:

(a) An extension of an eligible child's chapter 35 eligibility period under 38 U.S.C. 3512(a)(3) may be granted beyond age 31. To the extent 38 CFR 3041(d) purports to bar extensions of the basic eligibility period beyond age 31 in circumstances other than as described in either 38 U.S.C. 3512(a)(4) (following service on active duty); section 3512(a)(5) (following the date the child became eligible based on the parent being a member of the Armed Forces missing in action, captured by a hostile force, or forcibly detained or interned by a foreign government or power pursuant to section 3501(a)(1)(A)(iii)); or section 3512(c) (following suspension of the

child's program for reasons beyond the child's control, it is ultra vires and of no effect.

(b) The effect of finding clear and unmistakable error (''CUE'') is that the corrected decision is considered made on the date of the reversed decision. 38 CFR 3.105(a). Based on CUE, the veteran in this case was found entitled to compensation for permanent and total service-connected disability (''P&T'') effective August 19, 1986. As of the same date, each of the veteran's sons thereby became an ''eligible person'' (defined in 38 U.S.C. 3501(a)(1)(A)(ii)) entitled to chapter 35 education benefits. Such entitlement may be used during an 8-year eligibility period determined pursuant to 38 U.S.C. 3512, but in no event before the date when the affected child became an ''eligible person'' (*i.e.*, August 19, 1986).

(c) The basic chapter 35 eligibility period under section 3512(a) runs from the child's 18th birthday to the child's 26th birthday, but exceptions exist. Under the ''first finds'' exception, when the effective date of the veteran's P&T disability is between the child's 18th and 26th birthdays, section 3512(a)(3), as in force in November 1999, establishes, by operation, the beginning date for the child's eligibility period as the date the Secretary first finds that the parent from who eligibility is derived has a service-connected disability permanent in nature. The term ''first finds'' is defined in subsection 3512(d) to mean the effective date of the parent's P&T rating or the date of notification to the parent, whichever is more advantageous to the eligible person. Thus, a child's chapter 35 eligibility period must be determined on the facts found and based on the eligibility-period-beginning date that is more advantageous to the child pursuant to the application of both section 3512(a)(3) and section 3512(d). In addition, an award of chapter 35 benefits is predicated on the timely filing of a claim therefor. 38 U.S.C. 3513; 38 CFR 21.1029. The date of claim is an integral factor in determining the date from which benefits may be awarded, pursuant to 38 U.S.C. 5113, for pursuit of an approved program of education pursued during the child's established chapter 35 eligibility period.

Effective Date: July 27, 2004.

VAOPGCPREC 9–2004

Question Presented: Can a veteran receive separate ratings under Diagnostic Code (DC) 5260 (leg, limitation of flexion) and DC 5261 (leg, limitation of extension) for disability of the same joint?

Held: Separate ratings under DC 5260 (leg, limitation of flexion) and DC 5261 (leg, limitation of extension), both currently codified at 38 CFR 4.71a, may be assigned for disability of the same joint.

Effective Date: September 17, 2004.

Dated: September 27, 2004.

By Direction of the Secretary.

John H. Thompson,

Deputy General Counsel.

[FR Doc. 04–22436 Filed 10–5–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on October 25–26, 2004, at the Department of Veterans Affairs, 811 Vermont Avenue, NW., Room 819, Washington, DC. The session on October 25 will convene at 8 a.m. and adjourn at 5 p.m. The session on October 26 will convene at 8 a.m. and adjourn at 3 p.m. Both sessions will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Gulf War.

The Committee will review VA program activities related to Gulf War veterans' illnesses. The Committee will also hear presentations on data collection related to exposures and troop locations during the 1991 Gulf War and the current deployments in Iraq. There will be an update on scientific research on Gulf War illnesses published since the lost committee meeting. Additionally there will be preliminary information on treatment research for Gulf War illnesses, research related to possible health effects of exposure to oil well fires and other combustible petroleum products during the 1991 Gulf War, and discussion of committee business and activities.

Members of the public may submit written statements for the Committee's review to Ms. Preeti Hans, Designated Federal Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public seeking additional information should contact Ms. Preeti Hans at (202) 254–0223.

Dated: September 28, 2004.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–22439 Filed 10–6–04; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Women Veterans will meet October 19–21, 2004, from 8:15 a.m. to 3:30 p.m. in room C–7–C, VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by VA designed to meet such needs. The Committee will make recommendations to the Secretary regarding such programs and activities.

On October 19, the agenda will include briefings and updates on issues related to women veterans' issues in the Veterans Health Administration (VHA), including any treatment issues related to Operation Iraqi Freedom and Operation Enduring Freedom combat veterans and briefings from VHA's Women Veterans Health Program Deputy Field Directors on issues in the Veterans Benefits Administration, including outreach efforts and the role of the Women Veterans Coordinator in VA Regional Offices; presentation of Certificates of Appointment to four new Committee members; and discussion of the 2004 Report of the Advisory Committee on Women Veterans. On October 20, the Committee will be briefed on legislative issues affecting women veterans, VA research on women's health issues, upcoming initiatives of the Center for Women Veterans, and general ethics information related to Committee membership. On October 21, the Committee will be briefed by a representative from the Department of Labor Veterans' Employment and Training Service (VETS) on employment opportunities for women veterans, next steps and implementation of the National Capital Asset Realignment of Enhanced Services (CARES) recommendations, and will

discuss any new issues that the Committee members may introduce.

Any member of the public wishing to attend should contact Ms. Rebecca Schiller, at the Department of Veterans Affairs, Center for Women Veterans (00W), 810 Vermont Avenue, NW., Washington, DC 20420. Ms. Schiller may be contacted either by phone at (202) 273–6193, fax at (202) 273–7092, or e-mail at *00W@mail.va.gov*. Interested persons may attend, appear before, or file statements with the Committee. Written statements must be filed before the meeting, or within 10 days after the meeting.

Dated: September 29, 2004,

By Direction of the Secretary.

E. Philip Reggin,

Committee Management Officer.

[FR Doc. 04–22438 Filed 10–5–04; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of new system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled ''My Health*e*Vet Administrative Records—VA'' 130VA19.

DATES: Comments on this new system of records must be received no later than November 5, 2004. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new system will become effective November 5, 2004.

ADDRESSES: Written comments concerning the proposed new system of records may be submitted by: Mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or e-mail to *VAregulations@mail.va.gov.* All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (727) 320–1839.

SUPPLEMENTARY INFORMATION:

Background: My Health*e*Vet is a web-based system that provides veterans with information and tools that they can use to increase their knowledge about health conditions, increase communication with their care providers and improve their own health. Participating veterans can request on-line prescription refills, view upcoming appointments, and check their co-payment balances. Through a web-based environment, the VA will also provide a secure and private health space where veterans can enter their own medical information in a ''self-entered'' health information section, and request a download of copies of key portions of their official VA health record. Veterans can personalize this private environment with links to explanatory material that may help them understand their health record and how to improve their health. As My Health*e*Vet is refined, VA plans to offer more services to veterans, such as secure electronic messaging with their VA health care providers.

While VA is the authoritative source of veterans' VA medical records, once veterans request copies of key portions of their medical records, VA will download the copies into a secure and private health space where they are owned and maintained by the veteran.

The veteran's self-entered health information is also owned and maintained by the veteran in the My Health*e*Vet secure and private health space. This self-entered health information is only included in the veteran's official VA medical record upon the veteran's request and upon the VA's medical determination that it is appropriate to include it in the official medical record.

The VA does not provide access to the veteran's personal health information in My Health*e*Vet in medical emergency situations. However, if a non-VA health care provider requires information from VA medical records to treat a veteran patient, the non-VA health care provider should contact the VA facility where the veteran patient was last treated to obtain that information.

This new on-line environment, which is consistent with existing VA clinical practices, allows veterans to share all or part of the information in their account with other individuals, such as family members, and VA and non-VA health care providers.

VA will only release the health information in the veteran's private and secure health space when authorized to do so by the veteran user, except in very limited circumstances. These limited circumstances include in response to a court order or a subpoena signed by a judge, or in response to a written request from a law enforcement agency. Further details about the operation and maintenance of My Health*e*Vet are provided to qualified individuals at the time they register for the My Health*e*Vet program.

In order to administer the My Health*e*Vet program and support the provision of the above benefits to veterans, VHA is retaining administrative information, including personally identifiable information, on users and information technology (IT) administrators of My Health*e*Vet electronic services. This administrative information is stored in the My Health*e*Vet Administrative Records System, and constitutes a system of records.

I. Description of Proposed System of Records

The proposed My Health*e*Vet Administrative Records System contains administrative information created or collected during the course of operating My Health*e*Vet, and is provided by veterans and other qualified individuals, their delegates and grantees, Veterans Health Information Systems and Technology Architecture (VistA) IT systems, VA employees, contractors, and subcontractors. At this time, the My Health*e*Vet program is planning to maintain minimal administrative records at each local facility, while maintaining more comprehensive administrative records at a central location in the VA Austin Automation Center. The records kept locally support the local VA My Health*e*Vet training programs, sensitive information reviews and VA's annual reporting requirements under the Freedom of Information Act (FOIA) for those veterans who sign up for electronic access to copies of key portions of their health records.

The more comprehensive repository of administrative information is being housed at the Austin Automation Center (AAC). This information is used to support My Health*e*Vet electronic services, such as requests for prescription refill, co-payment and appointment information, entry of personal health metrics, and requests for copies of key portions of the personal health information on-line. This information may also be used for business administrative reports for

system operators and VA managers to ensure that the My Health*e*Vet system is meeting performance expectations and being used within legal boundaries.

The information needed to support My Health*e*Vet program activities and electronic services includes such information as: The person's full name; My Health*e*Vet User ID; date of birth; e-mail address; telephone number; mother's maiden name; zip code; place and date of registration for My Health*e*Vet electronic record access; delegate and grantee user IDs associated with My Health*e*Vet users; level of access to My Health*e*Vet electronic services; date and type of transaction; patient integration control number (ICN); and other administrative data needed for My Health*e*Vet roles and services.

II. Proposed Routine Use Disclosures of Data in the System

These routine uses only apply to the My Health*e*Vet administrative information described in this system of records notice. These routine uses do not apply to the veteran's personal health information maintained in the private and secure health space which is not owned by VA or subject to the system of records requirements. VHA is proposing the following routine use disclosures of information to be maintained in the system:

1. Relevant information may be disclosed to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement, including sub-contractors, to perform such services as VA may deem practical for the purposes of laws administered by VA, in order for the contractor to perform the services of the contract or agreement.

VA must be able to give contractors whatever information is necessary to fulfill their duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract.

2. On its own initiative, VA may disclose information, except for the names of My Health*e*Vet users, to a Federal, state, local, tribal or foreign agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. On its own initiative, the VA may also disclose the names of My Health*e*Vet users to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

VA must be able to comply with the requirements of agencies charged with enforcing the law and conducting investigations. VA must also be able to provide administrative information to state or local agencies charged with protecting the public's health as set forth in state law.

3. Disclosure may be made to National Archives and Records Administration (NARA) for it to perform its records management inspection responsibilities and its role as Archivist of the United States under authority of Title 44 United States Code (U.S.C.).

NARA is responsible for archiving old records no longer actively used but which may be appropriate for preservation; they are responsible in general for the physical maintenance of the Federal government's records. VA must be able to turn records over to these agencies in order to determine the proper disposition of such records.

4. Any information in this system of records may be disclosed to the United States Department of Justice or United States Attorneys in order to prosecute or defend litigation involving or pertaining to the United States, or in which the United States has an interest.

By law, the Department of Justice represents VA in all litigation and must be given record access when deemed necessary to provide appropriate representation.

5. Disclosure may be made to a Congressional office from this system of records in response to an inquiry from the congressional office made at the request of the individual who is the subject of the records.

In special cases, individuals request the help of a member of Congress in resolving issues relating to a matter before VA. The member of Congress then writes VA, and VA must be able to give sufficient information to respond to the inquiry.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information, in this case administrative information, will be used for a purpose that is compatible with the purpose for which VA collected it. In all of the routine use disclosures described above, either the recipient of the administrative information will use the information in connection with the My Health*e*Vet program, a matter relating to one of VA's programs to provide a benefit to VA, or to meet legal requirements for disclosure.

The notice of intent to publish, and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: September 20, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

130VA19

SYSTEM NAME:

My Health*e*Vet Administrative Records—VA.

SYSTEM LOCATION:

Veterans Health Administration (VHA) local facilities and the Austin Automation Center (AAC), 1615 Woodward Street, Austin, Texas 78772. Address locations for VA facilities are listed in VA Appendix 1 of the biennial publications of the VA systems of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered encompass:

(1) All individuals who successfully register for a My Health*e*Vet account;

(2) Representatives of the above individuals who have been provided grantee or delegate access to My Health*e*Vet including, but not limited to, family members, friends, or VA and non-VA health care providers;

(3) VA health care providers; and

(4) VHA Information Technology (IT) staff and/or their contractors and subcontractors who may need to enter identifying, administrative information into the system to initiate, support and maintain electronic services for My Health*e*Vet participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records include personally identifiable information, such as an individual's full name; My Health*e*Vet User Identifier (ID); date of birth; social security number; e-mail address; telephone number; mother's maiden name; ZIP code; place and date of registration for My Health*e*Vet; delegate and grantee user IDs associated with My Health*e*Vet accounts; level of access to My Health*e*Vet electronic services; date and type of transaction; patient internal control number (ICN); and other administrative data needed for My Health*e*Vet roles and services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Section 501.

PURPOSE(S):

The information in the My Health*e*Vet Administrative Records is needed to operate the My Health*e*Vet program, in particular, to authenticate and register veterans, to authenticate and register other appropriate individuals, to authenticate My Health*e*Vet administrators, to retrieve the veteran's information for filling prescription refill requests, provide users the ability to view appointments and co-payment balances, to extract health information from VistA, and provide other associated My Health*e*Vet electronic services for future phases of the My Health*e*Vet program. The administrative information may also be used to create administrative business reports for system operators and VA managers who are responsible for ensuring that the My Health*e*Vet system is meeting performance expectations and is in compliance with applicable Federal laws and regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure of information in this system of records may be made to private or public sector organizations, individuals, agencies, etc., with whom VA has a contract or agreement, including subcontractors, in order to administer the My Health*e*Vet program, or perform other such services as VA deems appropriate and practical for the purposes of administering VA laws.

2. On its own initiative, VA may disclose information, except for the names of My Health*e*Vet users and system administrators, to a Federal, State, local, tribal or foreign agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. On its own initiative, the VA may also disclose the names of My Health*e*Vet users and system administrators to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

3. Disclosure may be made to National Archives and Records Administration (NARA) to support its records management inspections responsibilities and its role as Archivist of the United States under authority of Title 44 United States Code (U.S.C).

4. Any information in this system of records may be disclosed to the United States Department of Justice or United States Attorneys in order to prosecute or defend litigation involving or pertaining to the United States, or in which the United States has an interest.

5. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These administrative records are maintained on paper and electronic media, including hard drive disks, which are backed up to tape at regular intervals.

RETRIEVABILITY:

Records may be retrieved by an individual's name, user ID, date of registration for My Health*e*Vet electronic services, ZIP code, the VA-assigned ICN, date of birth and/or social security number, if provided.

SAFEGUARDS:

1. Access to and use of the My Health*e*Vet Administrative Records are limited to those persons whose official duties require such access; VA has established security procedures to ensure that access is appropriately limited. Information security officers and system data stewards review and authorize data access requests. VA regulates data access with security software that authenticates My Health*e*Vet administrative users and requires individually unique codes and passwords. VA provides information security training to all staff and instructs staff on the responsibility each person has for safeguarding data confidentiality. VA regularly updates security standards and procedures that are applied to systems and individuals supporting this program.

2. Physical access to computer rooms housing the My Health*e*Vet Administrative Records is restricted to authorized staff and protected by a variety of security devices. Unauthorized employees, contractors, and other staff are not allowed in computer rooms. The Federal Protective Service or other security personnel provide physical security for the buildings housing computer systems and data centers.

3. Data transmissions between operational systems and My Health*e*Vet Administrative Records maintained by this system of records are protected by telecommunications software and hardware as prescribed by VA standards and practices. This includes firewalls, encryption, and other security measures necessary to safeguard data as it travels across the VA Wide Area Network.

4. Copies of back-up computer files are maintained at secure off-site locations.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the records disposition authority approved by the Archivist of the United States. Records from this system that are needed for audit purposes will be disposed of 6 years after a user's account becomes inactive. Routine records will be disposed of when the agency determines they are no longer needed for administrative, legal, audit, or other operational purposes. These retention and disposal statements are pursuant to the National Archives and Records Administration (NARA) General Records Schedules GRS 20, item 1c and GRS 24, item 6a.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for policies and procedures: Deputy Chief Information Officer for Health (19), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Officials maintaining this system of record: The local VA facility (Address locations for VA facilities are listed in VA Appendix 1 of the biennial publications of the VA systems of records) and the Chief, Technical Infrastructure Division (31), Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether a record is being maintained under their name in this system or wish to determine the contents of such records have two options:

1. Submit a written request or apply in person to the VA facility where the records are located. VA facility location information can be found in the Facilities Locator section of VA's Web site at *http://www.va.gov;* or

2. Submit a written request or apply in person to the Chief of the Technical Infrastructure Division (31), Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.

Inquiries should include the person's full name, User ID, date of birth and return address.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of

records in this system may write or call their local VA facility and/or the Chief of the Technical Infrastructure Division (31), Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772. If making a call, dial (512) 326–6780 to reach the VA Austin Automation Center Help Desk and ask to speak with the Chief of the Technical Infrastructure Division.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

The sources of information for this system of records include the individuals covered by this notice and an additional contributor, as listed below:

(1) All individuals who successfully register for a My Health*e*Vet account;

(2) Representatives of the above individuals who have been provided access to the private health space by the veteran user, including but not limited to, family members, friends, or VA and non-VA health care providers;

(3) VA health care providers;

(4) VHA IT staff and/or their contractors and subcontractors who may need to enter information into the system to initiate, support and maintain My Health*e*Vet electronic services for My Health*e*Vet users; and

(5) VistA systems.

[FR Doc. 04–22437 Filed 10–5–04; 8:45 am]

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Federal Register

Wednesday,
October 6, 2004

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Klamath River and Columbia River Populations of Bull Trout; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI52

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Klamath River and Columbia River Populations of Bull Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Klamath River and Columbia River populations of bull trout (*Salvelinus confluentus*) pursuant to the Endangered Species Act of 1973, as amended (Act). For the Klamath River and Columbia River populations of bull trout, the critical habitat designation includes approximately 1,748 miles (mi) (2,813 kilometers (km)) of streams and 61,235 acres (ac) (24,781 hectares (ha)) of lakes and marshes. We solicited data and comments from the public on all aspects of the proposed rule, including data on economic and other impacts of the designation.

DATES: This rule becomes effective November 5, 2004.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 NE., 11th Avenue, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: John Young, Bull Trout Coordinator, at the above address, (telephone 503/231–6194; facsimile 503/231–6243).

SUPPLEMENTARY INFORMATION:

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act (16 U.S.C. 1531 *et seq.*), we have found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. Our present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. We believe that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to, and protection of, habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, "Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.''

We address the habitat needs of all 1,211 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. We believe that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that a recent 9th Circuit judicial opinion, *Gifford Pinchot Task Force* v. *United State Fish and Wildlife Service,* has invalidated the Service's regulation defining destruction or adverse modification of critical habitat. We are currently reviewing the decision to determine what effect it may have on the outcome of consultations pursuant to Section 7 of the Act.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits regarding critical habitat designation, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected us to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves us with little ability to prioritize our activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, our own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left us with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This, in turn, fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis, provides little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects, and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act of 1969 (NEPA) None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

Bull trout *(Salvelinus confluentus)* are members of the char subgroup of the family Salmonidae and are native to waters of western North America. Bull trout range throughout the Columbia River and Snake River basins, extending east to headwater streams in Montana and Idaho, and into Canada, and in the Klamath River basin of south-central Oregon, but the distribution of populations is scattered and patchy. For additional information on the biology, habitat requirements, threats, and range of the bull trout, please refer to the proposed critical habitat rule (67 FR 71235, November 29, 2002) and final listing rule (June 10, 1998, 63 FR 31647).

Historical records for the Klamath River basin suggest that bull trout in this population segment were once widely distributed and exhibited diverse life-history traits in this part of their range (Ziller 1992). Currently, however, bull trout in this basin are almost entirely nonmigratory, resident fish that are confined to headwater streams (Goetz 1989). At time of listing, there were only

seven naturally occurring, nonmigratory populations (Service 1997, 1998, 1999) occurring in the Upper Klamath Lake, Sprague River, and Sycan Marsh watersheds in Oregon. Since then, two small resident and one remnant fluvial population have been discovered. The extant populations represent an estimated 21 percent of the estimated historic range of bull trout in the Klamath River basin (Quigley and Arbelbide 1997). These known remaining local populations are considered to be quite low in abundance; they are highly isolated from one another as a result of natural and human-caused conditions and are at substantial risk of extirpation due to natural disturbance cycles, random events, and other risk factors (Light *et al.* 1996).

The Columbia River population segment includes bull trout residing in portions of Oregon, Washington, Idaho, and Montana. Bull trout are estimated to have once occupied about 60 percent of the Columbia River basin; they presently are known or predicted to occur in less than half (approximately 45 percent) of watersheds in the historical range (Quigley and Arbelbide 1997), which amounts to approximately 27 percent of the basin.

Previous Federal Action

On November 29, 2002, we published the court-ordered proposed critical habitat designation for the bull trout Klamath River and Columbia River populations (67 FR 71235). In that proposed rule, we included a detailed summary of previous Federal actions completed prior to publication of that proposal as it related to all bull trout populations. The comment period was open until January 28, 2003. We now provide updated information on the actions that we have completed since the proposed critical habitat designation.

We reopened the comment period on the proposed rule from February 11, 2003, to May 12, 2003 (68 FR 6863). Subsequently, On April 5, 2004, we published a notice in the **Federal Register** of the availability of the draft economic analysis and reopening of the comment period for 30 days until May 5, 2004 (69 FR 17634).

Summary of Comments and Recommendations

In the proposed rule published on November 29, 2002 (67 FR 71235), we requested that all interested parties submit written comments on the proposal. We also contacted the appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment on the proposed critical habitat for the Klamath River and Columbia River populations of bull trout. In addition, we held nine public hearings between January 7, 2003, and January 22, 2003, in the following locations: Wenatchee and Spokane, Washington; Polson, Montana; Salmon, Boise, and Lewiston, Idaho; and Eugene, Pendleton, and Klamath Falls, Oregon.

We received a total of 549 written and oral comments during the three comment periods on the proposal published on November 29, 2002 (67 FR 71235), and the draft economic analysis. Of this total number of comments, 137 supported critical habitat, 315 either did not support critical habitat or provided critical comments regarding some portion of the designation, and 97 were neutral in their comments.

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited opinions from four individuals who have expertise with the species and the geographic region where the species occurs and are familiar with conservation biology principles. We also contacted and requested assistance in organizing peer review from the following three organizations: American Fisheries Society, Sustainable Ecosystems Institute, and Plum Creek Timber Company. While all three organizations expressed some interest in participating, only the American Fisheries Society provided assistance in organizing our peer review. All four of the peer reviewers generally supported the proposal, but also provided us with many constructive critical comments which we incorporated into the final rule. Key elements of the reviewers' critical comments were relative to the scope of the proposal, the need for greater prioritization of conservation issues that influence critical habitat designation, a greater emphasis on the need for quality habitat to support the migratory life form of bull trout, and the need for more explanation of why some particular habitat, including areas of degraded habitat, are important to bull trout conservation. Additionally, the reviewers provided many technical comments on the appropriateness and bounds of specific geographic areas proposed as critical habitat.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for the bull trout, and addressed them in the following summary.

Public Comments

Comments Related to the Biology and Process of Critical Habitat

1. *Comment:* The proposed critical habitat for the bull trout fails to account for the importance of habitat connectivity.

Our Response: The draft bull trout Recovery Plan (Service 2002) (draft Recovery Plan), the critical habitat proposal, and the listing rules for bull trout all reflect the scientific literature for this species relative to its conservation needs. The scientific literature indicates that bull trout were likely to have exhibited patchy distribution historically, prior to the arrival of European settlers, due to their habitat requirements and the effects of multiple episodes of glaciation. The critical habitat proposal, therefore, reflects the draft Recovery Plan's objective of ensuring the persistence of self-sustaining and interacting groups of bull trout distributed across their native range, within the limits of existing geographical impediments and subject to the biological characteristics of the species.

2. *Comment:* One commenter suggested that we choose appropriate knowledgeable, unbiased peer reviewers, and suggested that the critical habitat proposal be reviewed by the National Academy of Sciences (Academy) to help ensure an adequate, unbiased panel of reviewers, and to inspire more public confidence in the science behind the proposal.

Our Response: We agree that peer review provided by knowledgeable, unbiased scientists is important. While a National Academy of Sciences review is always appreciated, they are not the only entity capable of providing scientific review. Peer review for the bull trout critical habitat proposal was coordinated by the Western Division of the American Fisheries Society, a professional society dedicated to furthering scientific research and management on fish and other aquatic species in the U.S. Two of the peer reviewers work as research scientists for the U.S. Forest Service (USFS), one as a research scientist for the U.S. Geological Survey (USGS), and one as a research scientist at Colorado State University. All four reviewers have extensive backgrounds in fishery biology and science.

3. *Comment:* Are the current delineations of distinct population segments (DPSs) of the bull trout appropriate?

Our Response: Evaluating DPSs of the bull trout is not part of critical habitat rule-making process. We are required to

designate critical habitat for the species rangewide due to a court settlement and this rule covers the Columbia and Klamath portions of the species' range. However, we are currently conducting a 5 year review of the species' status, and information developed and considered during this review will help us evaluate the appropriateness of DPSs for the bull trout.

4. *Comment:* Many commenters suggested additional streams be designated as critical habitat for the bull trout. Others believed that the proposed designation included inappropriate streams or was excessive in scope.

Our Response: We believe that this designation is based on the best scientific and commercial information available, and includes only that habitat essential to the conservation of the Columbia and Klamath populations of the bulltrout. Comments documenting that proposed stream segments were not essential were evaluated and, when appropriate, used to refine the final designation.

Only those streams, lakes, and reservoirs that we believed to be essential to the conservation of the Columbia and Klamath populations of bull trout, based on the best scientific and commercial data available at the time the proposal was being developed, were included in the proposed critical habitat designation. This does not mean that streams not included in this designation cannot or will not contribute to bull trout recovery, but rather that they were not determined to be essential to the species' conservation.

Those areas that did not contain the physical or biological features essential to the conservation of the Columbia and Klamath populations of bull trout were removed from the designation of critical habitat. For further information refer to the Summary of Changes from the Proposed Rule section below.

5. *Comment:* How do State water quality standards relate to the proposed critical habitat rule and the concept of adverse modification?

Our Response: The Environmental Protection Agency (EPA) and the States share joint responsibility for implementing the Federal Clean Water Act (CWA). Under the CWA, each State develops its own programs to meet minimum Federal requirements and requires EPA to work with the States to ensure compliance. There are two ways in which State water quality standards relate to the designation of critical habitat. First, to the degree that they are influencing the current condition of designated critical habitat, these standards will be addressed in our biological opinions as part of the analysis required under section 7(a)(2) of the Act for any Federal action that may affect critical habitat. That analysis includes a general evaluation of the factors influencing the condition of the entire critical habitat area designated, as well as a more specific analysis of such factors within the critical habitat area affected by the proposed Federal action.

Secondly, States are required under the Federal Clean Water Act to periodically review their water quality standards to determine if they need to be revised. If a State proposes to revise or establishes a standard, that action is subject to approval by the U.S Environmental Protection Agency (EPA). If the proposed standard may affect critical habitat, the EPA is required to formally consult with us under section 7(a)(2) of the Act to ensure that this action does not destroy or adversely modify critical habitat.

6. *Comment:* Those most affected by the designation have not been involved in this designation of critical habitat for the Columbia and Klamath populations of the bull trout.

Our Response: We have strived to include those interested in the designation of critical habitat for the Columbia and Klamath populations of the bull trout in the rule-making process. We developed Recovery Unit Teams comprised of land owners, land managers, scientists, representatives of States, Tribes, and industry, and distributed a draft Recovery Plan outlining recovery objectives. Throughout the process of designating critical habitat, we have attempted to solicit and incorporate comments from those affected by this final rule. We solicited public comment through three public comment periods and nine public hearings, which we accepted oral and written comments. We tried to be responsive to the concerns raised, and diligently tried to address those concerns during the development of this final designation. Unfortunately, our ability to accept comment and work with stakeholders is limited by deadlines imposed by the Court as part of settlement agreements.

7. *Comment:* There are inconsistent unit descriptions between the draft Recovery Plan, draft economic analysis (DEA), and the proposed critical habitat rule.

Our Response: We agree that there are areas where the proposed rule and the DEA do not precisely follow the organization presented in the draft Recovery Plan. We regret any confusion this may have caused. Because the proposed rule and the draft Recovery Plan analysis are related, the organization of units between the two documents is similar. However, chapter one of the draft Recovery Plan has no counterpart in the critical habitat proposal, so subsequent Recovery Plan chapters (*e.g.*, chapters 2, 3, 4, etc.) do not correspond with critical habitat unit descriptions (*e.g.*, units 1, 2, 3, etc.). Additionally, the Columbia and Snake Rivers are treated as critical habitat units 24 and 25 in the proposed and final rule. There are no counterpart chapters in the draft Recovery Plan as the relationship of the Snake and Columbia Rivers to the individual population units are discussed within the appropriate individual chapters.

8. *Comment:* A number of commenters believed that the critical habitat proposal was speculative, not based on scientific principle, had insufficient supporting documentation, and reliance on the draft Recovery Plan was not in compliance with the requirements of the Act.

Our Response: Our proposal was based on the best available data at the time of development. We agree that much of the information is incomplete and the conclusions we reached were based on assumptions we were required to make in the absence of historic or recent data. However, we were required to identify critical habitat based on that information, and we have done so.

The bull trout critical habitat designation is based on the science and information behind the Recovery Plan, not on the Recovery Plan itself. The proposed designation was peer-reviewed by four individuals who have expertise with the species, the geographic region where the species occurs, and are familiar with conservation biology principles. Key elements of the reviewers' critical comments were relative to the scope of the proposal, the need for greater prioritization of conservation issues that influence critical habitat designation, a greater emphasis on the need for quality habitat to support the migratory life form of bull trout, and the need for more explanation of why some particular habitat, including areas of degraded habitat, are important to bull trout conservation. Additionally, the reviewers provided many technical comments on the appropriateness and bounds of specific geographic areas proposed as critical habitat. We incorporated the reviewers' comments into the final rule as well as applicable comments received during the comment period.

Recovery criteria identified in the draft Recovery Plan include trend data and the conservation of the species' distribution, abundance, population, and hydrological connectivity. Shortly

after the species was listed in 1998, we initiated development of a recovery plan for bull trout and convened 27 individual Recovery Unit Teams throughout five States to begin gathering information on the status and conservation needs of the species. These teams were composed of experts in biology, hydrology, forestry, in addition to resource users, and other stakeholders with interest in and knowledge of bull trout and the habitats they depend on for survival. Where available, we incorporated existing State-sponsored bull trout aquatic conservation plans and planning processes to support our information. The recovery planning process generated a considerable body of new information on the specific management and biological needs of bull trout

9. *Comment:* All references to bull trout sightings from unreliable or unsubstantiated sources should be eliminated from the decisionmaking process.

Our Response: We agree. Under the Act, we are required to use the best available information when making our decisions. We critically review all information provided to us. We have received numerous comments from the public and from State and Federal agency personnel relative to specific water bodies and the veracity of supporting documentation regarding bull trout use of such areas. The various data that we collect are weighted based on their verifiability, for example, anecdotal evidence and opinion have less weight than results from published studies or long-term or ongoing monitoring. If we receive information that appears to be "unsubstantiated,'' we evaluate it as such in the context of all comments received. However, in some cases, information from an "unsubstantiated source'' may be the best available information we have for a particular stream. We have modified the proposal accordingly.

10. *Comment:* Reliance upon conservation biology and metapopulation dynamics are invalid assumptions upon which to base a designation of critical habitat as these are theoretical approaches.

Our Response: The critical habitat determination is based on many factors and did not rely directly on metapopulation dynamics. Available information on conservation biology and metapopulation dynamics were factored in along with all of the other information available on specific segments. We acknowledge that there is not universal agreement on application of the metapopulation theory to bull trout populations or group of populations within a watershed. However, several studies indicate existing metapopulation dynamics in bull trout and other char (Rieman and McIntyre 1993; Dunham and Rieman 1999; Spruell *et al.* 1999; Morita *et al.* 2002; Whitely *et al.* 2003).

In the classic view, metapopulations are considered collections of roughly equivalent local populations with similar, but independent, risks of extinction through environmental variability. In the simplest models, local extinctions are balanced by migration and recolonization from extant populations. In recent years, metapopulation models have been extended to consider a variety of more complex systems, including substantial variation in the characteristics and dynamics of local populations, and the patterns and rates of dispersal among them. In the current view, structuring and partial independence of local populations are the fundamental concepts that distinguish a metapopulation from a simple panmictic (mingled) group in a patchy environment.

Any controversy around application of metapopulation theory is how rigidly to apply it. The primary value of metapopulation theory is in understanding the relevance of diversity and complexity of the species to which it is being applied—that salmonid complex life history is a reflection of the diversity of habitats they live in. Metapopulation theory is useful in trying to understand and conserve processes such as dispersal and linkages between landscapes, life history, genetic diversity, and habitat size requirements. Occasional or rare instances of metapopulation dynamics for a species is an implicit component of the concept.

Independent fishery scientist peer review of the draft Recovery Plan and critical habitat proposal, as well as a separate peer review of the Service Science Team Report (Whitesel *et al.* 2004) addressing key issues of bull trout recovery planning (including application of metapopulation theory), did not take issue relative to the application of metapopulation theory to bull trout conservation efforts.

11. *Comment:* One commenter wanted to know whether the description of reservoirs and lakes "at full pool'' or "when full'' reflected potential conservation concerns when pool levels were less than full, and how designating reservoirs at full capacity as critical habitat is scientifically supported. Also, there were concerns regarding minimum pool requirements at the Boise and Payette Reservoirs that would affect irrigation supply, economics, and groundwater supply.

Our Response: The use of those phrases was meant to delineate the area of the reservoir or lake by means of the high water mark, given that their volumes and areas vary with the seasons as water levels change. No implication as to the conservation benefits of various lake and reservoir levels or effects to proposed critical habitat for bull trout were intended.

12. *Comment:* Several commenters believed that large rivers such as the Columbia and Klamath Rivers are inappropriate as bull trout critical habitat.

Our Response: The Klamath River itself has not been proposed as bull trout critical habitat because we do not have any historical or current data to suggest this river has been used by bull trout. The mainstem Columbia and Snake Rivers have been excluded from critical habitat under Section 4(b)(2) in support of multiple management actions being undertaken in these reaches through the Federal Columbia Power System. The benefits of excluding critical habitat for these areas exceeded the benefits of designating critical habitat.

Segments of large rivers such as the Columbia and Snake Rivers are important to the conservation of the bull trout, because they are interconnected with tributaries that support bull trout and they provide important FMO habitat. Bull trout use of the Columbia River has been well documented by recent radio-tagging studies conducted by the Service (Service 2001, 2002c) and the Chelan, Douglas, and Grant County Public Utility Districts (Kreiter 2001, 2002; BioAnalysts, Inc. 2002). Recoveries of tagged bull trout in the Bonneville Pool that originated from the Hood River (Wachtel 2000) have shown that bull trout are using the mainstem reach of the lower Columbia River as well. Radiotelemetry studies by the Oregon Department of Fish and Wildlife (ODFW) (Hemmingsen *et al.*, 2001a, b), and Idaho Power Company (IPC) (Chandler and Richter 2000) have verified movements of bull trout between tributary streams and the mainstem Snake River. Current bull trout presence in the mainstem Columbia River reflects the strength of the local populations within tributaries and its value as migration corridors between the tributaries.

13. *Comment:* Critical habitat for the Columbia and Klamath populations of the bull trout should be extended to the entire hydrologic watershed.

Our Response: We acknowledged in the proposed rule that upstream habitat,

as well as adjacent terrestrial habitat, can influence the quality of aquatic habitat downstream and downslope. However, due to the complexity and variability of upstream habitat, and the difficulty in mapping that habitat, we are designating only the water bodies that have been determined to be essential to the conservation of the species

14. *Comment:* We received several comments indicating that hybridization is occurring between bull trout and other fish species (*e.g.*, cutthroat trout (*Oncorhynchus clarki*) and brook trout (*Salvelinus fontinalis*)). Some commenters also suggested that the emphasis on connectivity in the draft Recovery Plan, and the identification of migratory corridors as proposed critical habitat, could exacerbate the hybridization issue by providing invasion routes for nonnative species known to hybridize with bull trout, such as brook trout.

Our Response: We acknowledge this concern, and for that reason, are not designating connectivity corridors where we cannot be sure that competing species will not be introduced. Because cutthroat trout and bull trout are not of the same genus, have different spawning periods, and evidence of hybridization between the two has not been previously documented, we believe that hybridization between the two species is unlikely to occur.

Brook trout are known to displace native bull trout populations in some cases. We agree that, in some instances, the potential negative effects of brook trout introduction into habitat occupied by bull trout following the removal of barriers to migration could outweigh the benefits of providing access to expanded foraging, spawning, migratory, and over wintering (FMO) habitat for bull trout. In such cases, a site-specific evaluation should occur before barriers are removed. Areas above barriers were not included in critical habitat if site-specific evaluations had not been completed indicating that these areas were essential to bull trout and that barrier removal would not result in increased risk to the species.

15. *Comment:* Brook, lake trout (*Salvelinus namaycush*), brown (*Salmo trutta*), and rainbow (*Oncorhynchus mykiss*) trout have been introduced into bull trout habitat. These species compete with, and displace, bull trout and may be responsible for its decline. Given the competition between these species and bull trout, how will critical habitat improve this situation?

Our Response: Regardless of whether critical habitat contributes to and aids the conservation of the bull trout, we are required to designate critical habitat for species listed under the Act. One way that critical habitat may improve the nonnative competitor threat is through increased awareness of important bull trout habitat. Direct improvement of this situation may come about through decreases in the introductions of nonnative competitors and fishery management activities aimed at controlling or eradicating these species in bull trout habitat.

16. *Comment:* Several commenters suggested that bull trout are predators or competitors that have negative effects on other native and nonnative species.

Our Response: Bull trout are opportunistic predators that feed largely on other species of fish, both native and nonnative. Prey species consumed by bull trout vary considerably, depending on the location and time period. Bull trout evolved with other native species and, in some instances, because their habitat requirements are somewhat different, there is a limited area of overlapping distribution between them, at least temporally. We are not aware of any published scientific studies or other convincing evidence indicating bull trout predation is the leading cause in the decline of other native or introduced species. Therefore, we believe that any conservation of bull trout will not significantly affect the status of other species across the range of the bull trout. However, in some limited circumstances, local increases in bull trout populations may result in local decreases in other species upon which they prey.

17. *Comment:* One commenter suggested that we should encourage the development of an umbrella Safe Harbor Agreement (SHA) for a broad area such as an irrigation district.

Our Response: We agree. We actively seek the development of appropriate SHAs or other conservation measures and programs.

18. *Comment:* Several commenters stated that HCPs should not be excluded; others believed that excluding HCPs was appropriate.

Our Response: We have determined that lands covered under an existing or pending HCP as discussed, should be excluded from the designation of critical habitat because the benefits of excluding the lands covered by these management plans outweighs the benefits to the species by including them in the designation. Please refer to our discussion concerning the exclusion of approved HCPs later in the rule in the section Relationship to Section 4(b)(2) of the Act.

19. *Comment:* Several commenters questioned the affect of critical habitat on restricting the use of public lands, such as mining, and the impact on private lands.

Our Response: Critical habitat does not create a preserve or prevent access to private land, streams, lakes, or reservoirs. There is no connection between the designation of critical habitat and the use of private land unless there is a Federal nexus. A Federal nexus exists if activities on private lands are funded, authorized, or permitted by a Federal agency. Section 7(a)(4) of the Act requires Federal agencies to consult with us on any action that is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of designated critical habitat. As part of the consultation process, we will offer "reasonable and prudent alternatives'' as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the destruction or adverse modification of 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.

While it is true that mining activities may currently be restricted in some areas (*e.g.*, inwater work periods), these are existing restrictions required by the States and Federal land management agencies to protect natural resources, such as fish, and not due to the designation of critical habitat for bull trout.

20. *Comment:* Several commenters were concerned that the bull trout critical habitat designation will result in greater adverse effects to people, their communities, and their livelihoods than we have indicated.

Our Response: We agree. As a result, a significant portion of the designation has been removed for these reasons and others.

21. *Comment:* Critical habitat could restrict fire prevention and suppression, flood control, and governmental land use planning, as well as interfere with the management of public roadways and bridges.

Our Response: Human safety is a priority for both the Service and the Department. The Service issued "Endangered Species and Fire Policy Clarification'' on September 21, 1995 that emphasizes that firefighter safety

comes first and that responses to wildfire should not be delayed for ESA considerations. The Secretary of the Interior provided guidance on Firefighter and public safety on August 20, 2001 that states that "in the event of an emergency, no emergency response is to be delayed or obstructed because of ESA considerations.'' In emergencies, response to emergencies is first priority and any consultation requirements are addressed after the emergency is over.

22. *Comment:* A number of commenters felt the Service neglected or violated a variety of regulatory or other requirements, including the National Environmental Policy Act of 1969 (NEPA), Small Business Regulatory Enforcement Fairness Act (SBREFA), Title VI of the Civil Rights Act, the Data Quality Act (Pub. L. 106–554), Unfunded Mandates Reform Act, Regulatory Flexibility Act (RFA), and other laws, regulations, orders, and local ordinances.

Our Response: We are not required to prepare an environmental assessment or an environmental impact statement, as defined under the authority of NEPA, in connection with regulations adopted pursuant to section 4(a) of the Act, and in states under the jurisdiction of the 9th Circuit Court. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This position has been upheld by the Ninth Circuit Court of Appeals in *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995).

We have addressed all the relevant required regulatory determinations in this rule (see Required Determinations section below). We are not required to address Title VI specifically in our rule but believe this rule to be in full compliance with all appropriate laws and regulations. Relative to the Data Quality Act, our intent is to ensure that the most applicable scientific information has been applied in the development of the proposed rule. Both public and peer review of the proposed rule further ensures that the final designation will meet this standard.

23. *Comment:* The Service must take into account the Forest and Fish Report (FFR) law that protects aquatic habitat and water quality on State and private lands.

Our Response: Washington State law H.B. 2091, which codified the FFR, is a science-based plan that protects water quality and fish habitat on over 8 million ac (3.2 million ha) of non-Federal forestland in Washington State. Implementing regulations, developed by the Washington Forest Practices Board, require (1) establishment and retention of riparian buffers along streams to provide shade, large woody debris, and bank stability; (2) a bull trout temperature overlay strategy for streams located in the hotter, dryer environments east of the Cascade Crest; (3) using methods for construction and maintenance of roads and stream crossings that will maintain stream connectivity for fish passage, and shunt road-generated sediments from streams, and repairs to failing roads, bridges, and culverts within specific time frames.

With respect to the PCEs for bull trout critical habitat, we determined that forest practices conducted under the FFR regulations should result in improved water quality, which will promote bull trout reproduction, growth, and survival. Furthermore, implementing these regulations should maintain the thermal regimes of streams within the range of normal variation, contribute to the maintenance of complex stream channels, maintain appropriate substrates, natural hydrograph, ground-water sources and subsurface connectivity, migratory corridors, and provide abundant food sources for bull trout. Because bull trout will benefit from the implementation of the FFR regulations, we have excluded stream segments protected by these regulations. See Washington State Forest Practices Rules and Regulations, as amended by the Forest and Fish Law (FFR) under the Lands to be Excluded from Critical Habitat section below for more information.

24. *Comment:* Several commenters wanted to understand how critical habitat would affect ongoing projects including state water quality standards, flood control, habitat restoration, and hydropower.

Our Response: The designation affects these and other types of projects in two ways. First, the recognition value associated with the designation is intended to influence voluntary modifications, where appropriate, to these activities that would make them compatible with the proper functioning of the critical habitat.

Secondly, where a Federal agency has continuing discretionary involvement or control over the action, compliance with section 7 of the Act is required. If the on-going project may affect critical habitat, the Federal agency is required to formally consult with the Services under section 7(a)(2) of the Act to ensure that this action does not destroy or adversely modify critical habitat.

Because of potentially serious public health and safety issues that could arise as a result of third party lawsuits questioning reservoir operation, this designation does not include them.

25. *Comment:* Given that only the stream reach is being designated as critical habitat, it is unclear what area of land the agencies will view as potentially impacting that stream segment.

Our Response: Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the value of critical habitat for both the survival and recovery of bull trout is appreciably reduced. The degree of any potential effect will vary with the type of action, the location, and timing of where it occurs. Other variables include the status and extent of critical habitat, and the relationship of the critical habitat segment in question to the population of bull trout that it supports. Where upstream or upslope activities may affect downstream areas of critical habitat, consultation is required.

26. *Comment:* The PCEs are ambiguous and not scientifically defensible. They are not mutually exclusive, nor is it clear how many are essential to bull trout.

Our Response: The proposed bull trout PCEs represent those physical and biological features essential to the conservation of the species and in need of special management or consideration, as required under regulations at 50 CFR 424.12. All the PCEs are essential to the conservation of bull trout, but not all PCEs need to be present at every location within the designated critical habitat. Different PCEs may be important for only certain lifestages or at certain times of the year. Critical habitat needs to have only enough of the PCEs present to allow normal biologic function of the bull trout. We believe that PCEs represent the conservation needs of the species as indicated by the scientific literature. We agree that they are not mutually exclusive.

27. *Comment:* Proposed critical habitat areas, such as the Crooked River in Oregon, lack the physical and biological features essential for the conservation of the species.

Our Response: We agree and have removed that portion of the designation.

28. *Comment:* None of the PCEs are likely to occur in pristine environments, and places where they do are likely to change as a result of natural disturbances. Even in pristine environments, you may not have all the PCEs, and these are likely to change as a result of natural disturbances.

Our Response: We agree that pristine environments may not contain all of the PCEs, and that they can be affected by natural disturbances. In order to be designated as critical habitat, we must first determine if an area is "essential to

the conservation of the species,'' that is, contains primary constituent elements essential for the life cycle needs of the species. See our response to the comment above.

29. *Comment:* Water quality temperature criteria for bull trout currently do not incorporate critical factors such as their ability to survive in higher water temperatures in the laboratory when unlimited food supplies are present, and competition with other species is controlled.

Our Response: The identified range of temperatures where bull trout commonly occur in the wild is supported by the scientific literature, as indicated in the preamble to the proposed rule. We also acknowledge in the preamble that bull trout are known to occur in waters outside of this temperature range for short durations or seasonally. We note that migratory fish may utilize colder micro-environments such as thermal refugia at the mouths of tributary streams, or employ other mechanisms to survive passage through waters not generally suitable for the species. The PCEs reflect those primary biological components essential to the conservation of the species in question in the wild. We are unaware of any circumstances where existing bull trout habitat would replicate the laboratory conditions described. This rule expressly excludes any habitat that currently does not meet the temperature range included in our definition of the primary constituent elements for at least some portion of the year.

30. *Comment:* The proposal does not describe what "special management considerations or protection'' are necessary for proposed bull trout critical habitat, and much of the critical habitat designation overlaps with habitat that is already protected.

Our Response: Special management considerations or protection are those measures necessary to provide for the maintenance of the PCEs of bull trout critical habitat. These include maintaining water quality, providing for stable stream channels and flow regimes, maintaining the complexity of stream channels, and maintaining existing connected migratory corridors free from fish passage barriers. We agree that much of the habitat proposed as bull trout critical habitat is already protected. As we undertake the process of designating critical habitat for a species, we first evaluate lands defined by those physical and biological features essential to the conservation of the species for inclusion in the designation pursuant to section 3(5)(A) of the Act. Secondly, we then evaluate lands defined by those features to assess whether they may require special management considerations or protection. Refer to the Special Management Considerations or Protections section below for further information.

31. *Comment:* Several commenters felt that current Federal land management practices are sufficient to preclude bull trout critical habitat designation for bull trout. Such designation is a duplication of effort since Federal actions, such as allotment management plans, already undergo formal consultation.

Our Response: As specified in the proposed rule, the USFS and Bureau of Land Management (BLM) prepare land management plans which generally guide activities on the National Forest and BLM Districts. These plans provide some level of conservation benefit to species and the habitat they are known to occupy, often a very high level of conservation. Federal lands managed under the Northwest Forest Plan or managed in accordance with PACFISH/INFISH have been excluded under Section 4(b)(2).

32. *Comment:* Scientific applications developed under the Interior Columbia Basin Ecosystem Management Project (ICBEMP) should not be referenced in the critical habitat proposal because ICBEMP was never submitted for regulatory analysis.

Our Response: Although, ICBEMP has not been submitted for regulatory analysis we believe that there is important scientific information that is valuable to the conservation of bull trout that is appropriate to consider.

33. *Comment:* All Warm Springs Reservation lands should be exempted from the proposal.

Our Response: We met with the Confederated Tribes of Warm Springs Reservation of Oregon (CTWS) several times to discuss their ongoing management strategies for bull trout. During the course of these meetings, it became clear that their management was largely compatible with bull trout conservation, and we have excluded their lands under section 4(b)(2) of the Act. Refer to the Tribal Lands under the Lands to be Excluded from Critical Habitat section below for more information.

34. *Comment:* Multiple commenters noted that the Service proposed streams for critical habitat that do not currently support bull trout, but did not provide justification as to why these streams were proposed, and excluded areas where they are more likely to exist without an explanation for these exclusions.

Our Response: We based the designation of critical habitat on the science and information behind the Recovery Plan. However, the necessity of reestablishment in some areas is identified as necessary for recovery in the draft Recovery Plan. Critical habitat was proposed in those areas to assist in providing for the conservation of the species. We have received substantial comments from the public, Federal and State agencies, and peer reviewers on this subject, and have critically reviewed our proposal accordingly and made appropriate changes to this rule. Areas of unknown occupancy and unoccupied habitats were not included in the final designation.

Due to the extent of the designation and supporting information, the final rule includes a summary of the scientific basis of the designation. Refer to the Summary of Changes from the Proposed Rule section for additional information. A complete record of the information is contained in the administrative record for the rule.

35. *Comment:* One commenter thought that the Service did not accurately list the miles of stream or acres of lakes and reservoirs that are currently unoccupied by bull trout. They asked for a recalculation to determine if the numbers were accurate.

Our Response: We received numerous comments on the accuracy of specific stream, river, lake, and reservoir specifications as well as associated biological information. All stream distances and lake or reservoir acreages were calculated using Geographic Information System (GIS) mapping from multiple sources including: the StreamNet GIS database for Idaho, Oregon, Washington, and Montana; and State databases of bull trout distribution. Based on comments, we have made revisions in this rule. For the purposes of this critical habitat rule, the term "occupied'' was applied to streams where there is credible documentation of bull trout sighted within recent historical times (*i.e.*, 20 years). Unoccupied habitat was removed from the designation. Under the ESA, the Secretary of the Interior may include unoccupied lands if she finds that those lands are essential to the conservation of the species. In the case of bull trout, and based on the best scientific data available, it was not possible for the Secretary to make such a determination at this time.

36. *Comment:* Neither the draft Recovery Plan nor the critical habitat proposal describes the scientific basis for determining that bull trout should be recovered into many potential historic habitats.

Our Response: The Draft Recovery Plan does present the basis for determining which populations are in need of expanded adult abundance to be considered recovered. The specific rationale is unique to each core area and management unit identified in the various chapters of the plan. However, the overall basis can generally be stated as the need to maintain complex interacting groups of bull trout distributed across their current range to reduce risk of extirpation from random events, to maintain an effective population size at levels where genetic risks associated with low effective population size are minimized, and to provide for expression of the migratory life history form.

37. *Comment:* A few sightings of bull trout in a water body does not mean it is occupied. Potential historic habitat is not the same as habitat that was actually occupied.

Our Response: We disagree that the presence of bull trout does not indicate that habitat is occupied by bull trout, at least temporally. A published survey protocol for juvenile and resident forms was not developed until 2002, no similar survey protocol for adult migratory forms has yet been developed, and many bull trout sightings are merely the incidental result of surveys for other species without consideration for the specific habits of bull trout. Therefore, an incidental sighting of a single or a few bull trout is often the only information that is available until a concentrated survey for bull trout is conducted. With the increasing availability of radio telemetry data, we are finding for many of the populations that have been studied that the extent of habitat bull trout occupy is often greater than was previously known from incidental observations. We agree that potential historic habitat is not the same as habitat that was previously documented as occupied.

38. *Comment:* A number of commenters felt that the duration of the comment period was too short and occurred during a holiday season.

Our Response: The public comment period was open for 210 days. The first comment period was open for 90 days from November 29, 2002, until January 28, 2003 (67 FR 71235). Because of the concern that there was not sufficient time to review such a large proposed rule, we reopened the comment period an additional 90 days from February 11, 2003, to May 12, 2003 (68 FR 6863). We reopened the comment period a third time for the public to provide comments on both the proposed rule and the DEA from April 5, 2004, until May 5, 2004 (69 FR 17634). We were unable to extend the comment period further due to our court-ordered deadline of September 21, 2004.

39. *Comment:* A commenter asked that the Service consider ongoing or potential activities that might negatively affect bull trout critical habitat.

Our Response: When designating critical habitat we are limited to identifying those areas essential to the conservation of the species. Ongoing or potential future activities that may negatively affect bull trout critical habitat are not addressed during the critical habitat rule making process, but during subsequent processes, such as section 7 consultations with Federal agencies.

40. *Comment:* One commenter stated that specific numerical habitat standards for critical habitat must be included along with critical habitat designations.

Our Response: The PCEs identified in the proposed critical habitat rule include numeric standards indicative of habitat essential to the conservation of bull trout when appropriate. We also recognize that, historically, bull trout existed in habitat that may not have contained all of the PCEs all of the time. Migratory forms of bull trout may have evolved, in part, to adjust to this situation and take advantage of more suitable habitat, at least seasonally.

41. *Comment:* Riparian and upland areas should be included as critical habitat. There is no scientific basis for this exclusion, nor is it a credible approach to designating critical habitat.

Our Response: Because of the widespread distribution of bull trout across varied landscapes, ranging from the moist, steep western slopes of the Cascade Mountain range to the high desert environment of southern Idaho, to the western slopes of the Rocky Mountains, we were unable to generally describe riparian and upland areas important to the aquatic function of streams, lakes, and reservoirs. Additionally, we believe a critical habitat rule should be easily interpretable to the public, including the provision of specific maps. Because of these factors, we chose to limit the critical habitat proposal to those aquatic environments essential to the conservation of bull trout.

However, the proposal recognizes that the quality of aquatic habitat within stream channels, lakes, and reservoirs, is intrinsically related to the character of the flood plains and associated riparian and upland zones. Activities that occur outside the aquatic environment can have demonstrable effects on its physical and biological features. Activities that may destroy or adversely modify critical habitat are identified as those that alter the PCEs to an extent that the value of critical habitat for both the survival and recovery of the bull trout is appreciably reduced, including alterations of stream flows, riparian function, stream bank conditions, and water quality. Therefore, although areas outside of the aquatic environment are not included as proposed critical habitat, the proposal does recognize the scientific basis for linking the quality of the aquatic environment with the physical processes that occur outside of that environment.

42. *Comment:* The Service should designate critical habitat for a number of "source water'' streams; these are predominantly steep, small streams not occupied by bull trout but that are key sources of cold, clean water that feed bull trout habitat downstream.

Our Response: Our determination of bull trout critical habitat is limited to areas that bull trout utilize (or could utilize) for some portion of their life cycle. Areas that contribute an important resource, but do not provide essential habitat for bull trout, are not being considered for designation.

43. *Comment:* A commenter wanted to know if bull trout critical habitat will affect Native American treaty fishing rights or access to fishing areas.

Our Response: The bull trout critical habitat rule will not affect Native American treaty fishing rights or access to fishing areas. Critical habitat does not set up a preserve or prevent access to streams, lakes, or reservoirs. When we published the final rule listing the bull trout on November 1, 1999 (64 FR 58910), we also published a special 4(d) rule that applied wherever bull trout occur in the coterminous lower 48 States, except in the Jarbidge River basin in Nevada and Idaho. The principal effect of this special rule is to allow take in accordance with State, National Park Service, and Tribal permitted fishing activities.

44. *Comment:* We must consult with Native American Tribes prior to the publication of a final economic analysis (FEA).

Our Response: We have been and will continue to consult with those Tribes affected by the critical habitat designation. We contacted Native American Tribes where proposed bull trout critical habitat occurred on, or adjacent to, Tribal lands. We discussed the critical habitat proposal with representatives of the Tribes and worked with them to address their concerns.

45. *Comment:* Several commenters felt that Tribal lands should be

excluded; other commenters felt that Tribal lands should not be excluded.

Our Response: In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we coordinate with federally recognized Tribes on a government-to-government basis. Further, Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (1997) provides that critical habitat should not be designated in an area that may impact Tribal trust resources unless it is determined to be essential to the conservation of a listed species. We, therefore, are obligated to consult with Tribes based on their unique relationship with the Federal government, and to evaluate the appropriateness of designating Tribal lands within the framework of the above mentioned directives. In addition, we evaluate Tribes past and on-going efforts for species conservation and the benefits of including or excluding Tribal lands in the designation under section 4(b)(2).

Unit Specific Comments

Unit 1: Klamath River Basin

46. *Comment:* Using radio-telemetry, we have found that bull trout reside only in the stream channel and do not move into wetland areas associated with Sycan Marsh. Radio telemetry data obtained during the fall of 1999 and spring of 2000 by the Klamath Bull Trout Working Group is incorrect.

Our Response: Bull trout radio telemetry studies in the Sycan Marsh Core Area (Long Creek) have had very limited success. Of four fish tagged in 1999, three died shortly thereafter. Until the tag ceased transmitting, telemetry data indicated the remaining fish moved onto private lands along lower Long Creek and remained there through the winter. In 2000, the surviving, previously tagged fish was recaptured and the tag replaced. Telemetry data indicated it migrated upstream in Long Creek, and then returned to the same location as the previous winter. Two data points (from the same animal) are inadequate to develop informative trends (C. Bienz, The Nature Conservancy, pers. comm. 2002).

47. *Comment:* Drought conditions over the past 3 years, with low flow and high stream temperatures, make the Upper Sycan Watershed uninhabitable for bull trout.

Our Response: Current drought conditions have undoubtedly had an effect on bull trout habitat and distribution, as have anthropogenic activities. Flows should improve as efforts to restore watershed conditions in the Upper Sycan Watershed are implemented by land and resource managers and agencies. However, all waterways will continue to be influenced by climatic factors.

48. *Comment:* The inclusion of Deming Creek within proposed critical habitat conflicts with Oregon's policy regarding installation and operation of positive barrier fish screens at water diversion locations. Deming Creek is diverted into a canal with limited amount of water left in stream. The bull trout population no longer exists in the stream and has established itself in the canal. The area affected by these artificial canals, headgates, diversions, and irrigation facilities should not be included within the critical habitat designation.

Our Response: The Deming Creek population is the last remaining stronghold of bull trout in the Klamath Basin. As such, they provide a potential source for expanding the numbers and distribution of bull trout in the basin. More individuals distributed across a broader landscape will reduce risk of extirpation from random events, contribute to maintaining an effective population size at levels where genetic risks associated with low effective population size are minimized, and provide for expression of the migratory life history form. We note that the irrigation canal identified in this comment is not included in the critical habitat designation. In addition, unoccupied habitat has also been removed from the final designation.

49. *Comment:* The proposal fails to reveal that Deming Creek has been channelized, and does not explain how this channelization affects the use of these canals for migration, spawning, and/or rearing.

Our Response: Only the lower 1.0 to 1.5 mi (1.6 to 2.4 km) section of Deming Creek has been channelized. From the trailhead to its headwaters, the creek remains in the natural channel and relatively untouched. Because stream flows become subsurface below Anderson Field, Deming Creek bull trout are isolated from the rest of the Basin. Therefore, it is unlikely that Deming Creek bull trout will develop a migratory life form, and will remain a stronghold of native resident fish.

50. *Comment:* There is concern relative to migrating fish being exposed to *Ceratomyxa shasta* if they migrated into Agency Lake or to other sites with *C. shasta.* If the fish were to migrate downstream into the lake, there could be significant mortality to the larger juvenile and adult bull trout as well as a source of infection to other stream reaches on the return migrations. If bull trout are in fact not resistant to *C. shasta,* then the theory of winter migration among watersheds would be clearly false and there would be no scientific basis to designate these areas as critical habitat

Our Response: Ceratomyxa shasta is a microscopic myxosporean protozoan parasite that afflicts salmonid fish of the Pacific Northwest (Bartholomew *et al.* 1989). Its life cycle is not fully understood. Progression of infection and mortality is temperature dependent and native salmonid stocks exhibit varied resistance to it (Bartholomew 1998). Chinook salmon (Oncorhynchus tshawytscha) do not appear to be affected by C. shasta when water temperatures remain below 60 °F (15 °C) (PacifiCorp 2002), indicating migrating bull trout may not be affected. More information is needed to determine whether bull trout are resistant to C. shasta and to monitor the impacts and extent of it within the Basin. If research reveals that bull trout are not resistant to C. shasta, then we may need to consider revising critical habitat at a later time.

51. *Comment:* The proposed critical habitat includes Threemile Creek as a winter migration corridor for bull trout that connects to Agency Lake. Threemile Creek has been redirected and currently flows into a series of canals, and does not directly enter Agency Lake or provide any form of hydraulic continuity for bull trout migration.

Our Response: Threemile Creek connects to Agency Lake via Crane Creek, Fourmile Creek, and the Westside and Sevenmile Canals. Threemile creek has been excluded from the final designation.

52. *Comment:* It is unlikely that bull trout will move downstream into Agency Lake and then migrate into tributaries not currently occupied. As has been demonstrated in streams in Montana, bull trout will not migrate through warm water to spawning beds. Absent careful analysis of the temperature regimes of the various streams, it is impossible to determine whether bull trout will use the currently unoccupied areas for migration downstream to Agency Lake and then into other streams, given their strong homing fidelity.

Our Response: Although resident and rearing juvenile bull trout are typically found in colder headwater reaches that meet the conditions necessary for spawning and rearing, larger migratory bull trout are more tolerant of wider

temperature regimes. In the Klamath Basin, large bull trout have repeatedly migrated from cold water refugia through warm waters (69 °F (21 °C) upstream to spawning grounds, and returned (B. Quick, ODFW, pers. comm. 2000; C. Bienz, The Nature Conservancy, pers. comm. 2001).

In addition, some habitat, particularly FMO habitat, may only be seasonally occupied. Bull trout seek cold water refugia as water temperatures raise near or beyond preferred thermal regimes. Throughout the range of bull trout there are segments of stream systems that are not occupied in summer months because of warm water temperatures but serve as FMO habitat when water temperatures cool during fall, winter, and spring (Idaho Department of Environmental Quality (IDEQ) 1998).

In the Upper Klamath Lake CHSU, bull trout historically occupied several streams that drained into Agency and Klamath Lakes (Goetz 1992; Light *et al.* 1997; Buchanan 1998) until human actions altered aquatic habitat (Bond 1992; Cross and Everest 1995; Light *et al.* 1997; Quigley *et al.* 1997), leading to the extinction of most local populations in the Basin. Only two, small, isolated subpopulations remain in the Upper Klamath Lake CHSU. As recovery actions in the Klamath Basin improve habitat, and as bull trout populations grow, behavioral traits such as colonization and migratory life forms will likely be expressed. This may lead to the utilization of riverine and lacustrine habitats in Agency Lake and adjacent streams, at least seasonally.

53. *Comment:* Clarify the boundaries of critical habitat, and specify which database, or base map, that units were derived from, and when possible use specific geographic reference points. Land managers need to be able to know and reproduce the legal boundaries.

Our Response: Critical habitat maps were compiled from various sources. Rather than try and piece together many small data sets with varying degrees of accuracy and resolution, we relied predominantly on StreamNet as it is the largest and most readily available database. USFS databases were also used where stream data were not available in StreamNet. Legal descriptions of critical habitat units are provided in this rule and maps are available on our bull trout Web site: *http://www.r1.fws.gov/bulltrout/colkla/index.htm,* and our Field Offices can provide further clarification (Klamath Falls Fish and Wildlife Office (FWO), Oregon FWO, Western Washington FWO, Upper Columbia FWO, Snake River FWO, and Central Washington Field Office).

54. *Comment:* The Service cites a study that found "historical records for the Klamath Basin suggest that bull trout in this distinct population segment were once widely distributed and exhibited diverse life-history traits in that part of their range'' (Ziller 1992). However, Ziller's study focused on the Sprague River subbasin. Did that study specifically address the presence of migratory bull trout in the area of northern Upper Klamath Lake and Agency Lake?

Our Response: Although Ziller (1992) was cited several times in the draft Recovery Plan in relation to distribution surveys, population size and abundance estimates, extirpation, and displacement of bull trout by brook trout the statement: "Limited historical references suggest that bull trout were once widely spread throughout the Klamath River system.'' was attributed to Buchanan *et al.* (1997).

Unit 2: Clark Fork River Basin

55. *Comment:* Several commenters expressed concern that bull trout recovery and critical habitat designation will negatively impact the Montana economy and tourism by impeding resource and recreation opportunities.

Our Response: As stated in our economic analysis, recreation and tourism are not formally recognized economic sectors with directly measurable income and employment data. Rather, direct employment related to recreation and tourism is found primarily within various components of the retail trade and service sectors. However, it is more likely that the long-term benefits of appropriate resource management will positively affect those parts of Montana's economy that are based on resources and recreation. This is at least partly due to the enhanced recreational angling opportunities afforded by bull trout recovery, as well as appropriate bull trout management being compatible with sustainable resource practices.

Unit 4: Willamette River Basin

56. *Comment:* Why was critical habitat not designated on the Clackamas River?

Our Response: Based on limited historical information, it is unknown whether reproducing bull trout populations existed previously in the Clackamas River. Bull trout are not known to currently inhabit the Clackamas River, but their presence was documented historically. Based on this information, the Clackamas River was not identified as essential to the conservation of the species. The Recovery Unit Team believes that the sub-basin has the necessary habitat elements to support the reintroduction of bull trout.

Unit 5: Hood River Basin

57. *Comment:* One commenter questioned the consistent use of the term "occupied'' and how this fits into the rational of why the Service did not designate the Sandy River, and how that differs from the West Fork and East Fork Hood Rivers, which were included in the proposed rule. Although the commenter supports designating the West Fork Hood River, they believe the West Fork Hood River is not currently occupied.

Our Response: For the purposes of this critical habitat rule, the term "occupied'' applies to streams where there is credible documentation of bull trout sighted within recent historical times (*i.e.*, 20 years). Documentation of bull trout occurrence was deemed credible if recorded by a biologist working for a State, Federal, Tribal, Public Utility District, University, or other entity. Vague descriptions of "trout'' or "salmon-sized fish with orange spots'' in the ethnographic literature or other similar sources were not deemed to be reliable and were not used to document occupancy.

Using this definition, unoccupied habitat was removed from the designation. Under the ESA, the Secretary of the Interior may include unoccupied lands if she finds that those lands are essential to the conservation of the species. In the case of bull trout, and based on the best scientific data available, it was not possible for the Secretary to make such a determination at this time.

The Sandy River basin has been identified as core habitat (encompasses spawning and rearing habitat for resident populations, as well as FMO habitat for migratory populations) in the draft Hood River Recovery Plan due to recent bull trout sightings and suitable habitat conditions, but additional research on bull trout use of the Sandy River is needed. Sufficient information is not available to determine the source of bull trout observed in the Sandy River, or to define any local populations and their respective core areas. The draft Recovery Plan has identified the extent of bull trout use of the Sandy River as a primary research need. Because of this lack of information it was determined to not be essential to the conservation of bull trout at this time. The Sandy River basin, therefore, is not designated as critical habitat. Since the publication of the draft Recovery Plan, the East Fork of the Hood River has been excluded as habitat

essential to the conservation of the species based on the information received from members of the Hood Recovery Unit Team. Past bull trout sightings in the East Fork Hood River are considered rare, and bull trout use of the East Fork Hood River is thought to be unlikely due to unsuitable habitat conditions and absence of bull trout sightings during surveys.

The Hood Recovery Unit Team has identified the West Fork Hood River as important to the conservation of bull trout and a potential local population has been identified for this basin. Based on temperature observations from USFS (1996b), suitable bull trout habitat is present in the mainstem of the West Fork Hood River, and bull trout were historically distributed in a short reach of the West Fork Hood River (Buchanan *et al.* 1997). Current bull trout use of the West Fork Hood River is thought to be primarily used as FMO habitat. We believe the West Fork Hood River will allow for population expansion and that it provides essential habitat. Lands managed in accordance with the Northwest Forest Plan and PACFISH/INFISH were excluded from the designation under Section 4(b)(2).

Unit 8: John Day River Basin

58. *Comment:* One commenter suggested that although Granite Creek was historic spawning and rearing habitat, it currently serves as FMO habitat.

Our Response: We agree.

59. *Comment:* One commenter suggested that although Clear Creek is essential habitat necessary to recover bull trout, it is not currently an occupied spawning area.

Our Response: There have been many anecdotal reports of bull trout and the presence of bull trout in the upper reaches of the watershed to suggest that they are using Clear Creek, but we agree there is not evidence of current spawning. Habitat within the John Day River Basin has been excluded under provisions of Section 4(b)(2) based on management actions associated with the Federal Columbia River Power System.

Unit 9: Umatilla / Walla Walla River Basins

60. *Comment:* Several commenters did not think it was appropriate to combine the Umatilla River Basin and the Walla Walla River Basin into the same critical habitat unit (CHU). They suggest that we split them into separate units.

Our Response: The CHU boundaries are based on bull trout recovery units as defined in the draft Recovery Plan that were based on the State of Oregon's Bull Trout Working Group and conservation efforts which were initiated and established years before the listing of bull trout. We felt it was most expedient to overlay our Federal process on the already established State efforts. These unit boundaries were not considered in the process used to determine what habitat areas are essential for bull trout. So, the areas included in the critical habitat designation would be the same, regardless of whether the Umatilla and Walla Walla river basins are combined or split into separate units.

Unit 10: Grande Ronde River Basin

61. *Comment:* One commenter noted that the inclusion of Sheep Creek and Five Points Creek as proposed critical habitat appears to be based purely on speculation that these streams have potential habitat to expand existing bull trout distribution in the Grande Ronde Recovery Unit.

Our Response: Unoccupied areas for both Sheep Creek and Five Points Creek were removed from the final designation. Lands managed under PACFISH/INFISH were excluded under Section 4(b)(2).

Surveys for bull trout have not been done in Sheep Creek and East Sheep Creek. Spawning and rearing habitat in the upper portion of Sheep Creek and East Sheep Creek are characterized by high water quality and low water temperatures. Because we cannot confirm at this time that bull trout currently occupy the lower portion of Sheep Creek, and we have no data to verify historical occupation, we deleted this section from final critical habitat designation. Bull trout have been sighted in the lower 0.5 mi (0.8 km) of Five Points Creek. Also, several creeks with spawning and rearing habitat drain into Five Points Creek.

Recovery objective #2 in the draft Grande Ronde River Recovery Unit Plan states that for the Grande Ronde River Core Area, "Increased population abundance is expected to occur by securing the distribution in the Hurricane and Looking Glass creeks as well as the Wenaha River, and by securing and expanding seasonal distribution in the Upper Grande Ronde, Minam/Deer and Lostine/Bear complexes, as well as Catherine and Indian creeks.'' Sheep and Five Points Creeks and associated tributaries are within the upper Grande Ronde River local population and are essential for bull trout population and distribution expansion necessary to achieve conservation. FMO and spawning and rearing habitat exist in these stream systems.

Unit 12: Hells Canyon Complex

62. *Comment:* The primary limiting factors for bull trout in the Powder River Basin are the Hells Canyon and other dams that deprive bull trout of an important prey base. Critical habitat designation will do little or nothing to address these obstacles, while interfering with water use practices that improve conditions for bull trout.

Our Response: We agree that bull trout have lost a major food source with the elimination of anadromous salmon from the Snake River system above Hells Canyon dam. While salmon were an important food source for bull trout, salmon were not the only prey base used by bull trout. Bull trout are opportunistic feeders and will generally prey upon whatever they can catch. The food habits of bull trout are primarily a function of size and life-history strategy. We have addressed restoration of anadromous fish by including task 3.1.3 in the Recovery Measures Narrative of the Draft Recovery Plan. Task 3.1.3 recommends restoration of the historical prey base for bull trout by reestablishing viable populations of anadromous fish. The designation of critical habitat should not interfere with efforts to improve conditions for bull trout because beneficial actions for bull trout should support the PCEs.

63. *Comment:* Watershed enhancement projects are currently taking place on National Forest System lands, and on private lands along Cracker, Fruit, and Little Cracker creeks, and along the Powder River. The county ensures that county roads do not impact water quality in streams; the USFS, State and county, along with miners, permittees, ranchers, farmers, and recreationists, are all working with the goal of improvement of the county's rivers and streams. Why are these streams designated?

Our Response: The value of these efforts have been recognized and considered in the final designation. Management of lands under PACFISH/INFISH guidelines have been recognized and these lands have been excluded under Section 4(b)(2). Unoccupied habitat has been removed from the final designation as have small segments (less that 0.5 miles) that are in private ownership. The remaining lands in this area have been determined to contain PCEs and be essential to the conservation of bull trout.

64. *Comment:* Historical data available in Baker County gives an account of Powder and Burnt Rivers, along with the majority of their tributaries, as being dry in late summer prior to the installation of water storage

facilities. Presently, stored water, used primarily for irrigation, keeps streams and rivers flowing all year. Late in the summer, however, the water level drops and water temperatures increase. This condition is pervasive in all watersheds in Baker County.

Our Response: The Powder River is not included in the final designation because it is not currently occupied. Some tributaries to the Powder River are currently occupied and do contain PCEs and these remain in the final designation. The Burnt River and its tributaries were not designated as bull trout critical habitat because this basin has not been identified as necessary for recovery of bull trout within the Hells Canyon Complex Recovery Unit (Service, in prep. 2004a), and also because historical population documentation is lacking (Ratliff and Howell 1992; Buchanan *et al.* 1997).

65. *Comment:* There is no evidence that any resource industries such as logging and grazing have been harmful to the bull trout in this unit, and these practices may be important management tools for the species.

Our Response: Habitat fragmentation and degradation are likely the primary threats for bull trout throughout the Hells Canyon Complex Recovery Unit. Some resource practices that have historically adversely impacted bull trout have ceased or been altered to reduce impacts to waterways. We agree that logging and grazing can be compatible management practice if conducted appropriately.

66. *Comment:* Given the inherent problems in developing fish passage around dams, the Hells Canyon Complex is not essential for preservation of the species since there are many other areas within the Pacific Northwest region that have less formidable obstacles. Designating this area as critical habitat, places too large a burden on the residents and particularly the agricultural community.

Our Response: We acknowledge that providing fish passage around hydroelectric or water storage facilities can be challenging. It is important to individually assess each facility relative to the conservation needs of the species of concern, potential benefits to the species, and economic costs associated with the action. Providing for fish passage does not mean that expensive alterations to concrete facilities is the only solution. In some instances trap and haul operations may be sufficient, in others spilling water or channeling water through sluiceways may be the preferred operation. In other instances, fish passage may not be the preferred alternative. Reservoirs were excluded from the final designation due to concerns about possible third party actions.

67. *Comment:* Will critical habitat designation result in the elimination of irrigation in Baker County?

Our Response: No. The designation of critical habitat does not create a regulatory burden for private landowners unless there is a Federal nexus (*i.e.*, the private action is connected with a Federal action). However, we realize that many irrigation projects do have a nexus with the Bureau of Reclamation or the U.S. Army Corps of Engineers. When there is a nexus, adverse effects to critical habitat will need to be addressed through formal section 7 consultations. Federal actions will be evaluated on a case-by-case basis. If the Service finds that a proposed Federal action would result in destruction or adverse modification of critical habitat, the Service will develop one or more Reasonable and Prudent Alternatives to the proposed action that (1) avoid the likelihood of adverse modification, (2) can be implemented in a manner consistent with the intended purpose of the action, (3) can be implemented consistent with the scope of the action agency's legal authority and jurisdiction, and (4) are economically and technologically feasible. Given these four elements, we do not foresee a Reasonable and Prudent Alternative consisting of the elimination of irrigation in Baker County.

68. *Comment:* Historically, not all the river systems mentioned have had native bull trout populations. Because of high water temperatures and low dissolved oxygen in many of streams and rivers, such as the lower section of the Powder River, bull trout can't be supported.

Our Response: All creeks included in the draft Hells Canyon Complex Recovery Plan are within the historical range of bull trout. Bull trout use of the mainstem Powder River is most likely as FMO habitat during the late fall and winter. During this time, flows in the Powder River are significantly higher than during the late spring and summer, when irrigation withdrawals occur. The water is also cooler, and most likely contains higher oxygen levels compared with warmer summer flows. We believe that the mainstem Powder River can continue to serve as FMO habitat for bull trout in a recovered condition.

69. *Comment:* Why was there no communication from the recovery teams regarding bull trout critical habitat designation to any potentially impacted groups affected within this unit?

Our Response: During the recovery planning process, we actively encouraged stakeholder involvement through contacting watershed council representatives and requesting their participation. We have made a concerted effort to increase stakeholder participation in the recovery planning process for the Hells Canyon Complex by meeting with the Baker County Bull Trout Response Team to learn about concerns and try to incorporate those concerns into the critical habitat designation. Mining, agriculture, sport fishing, and landowner interests have all been represented at meetings we have held between the publication of the draft and the final recovery plan chapter for this unit.

70. *Comment:* What was the time-frame that the Recovery Unit Team was working under?

Our Response: Coordination between the Service and ODFW has been occurring informally since 1993. At the first formal working group in 1997, the USFS, ODFW, and BLM biologists and hydrologists met to share information on bull trout, discuss critical data needs, and coordinate activities that would lead toward development of a conservation strategy for bull trout in the Pine Creek basin. Recovery Unit Team organization began in 1999 with an invitation sent to agencies and watershed councils to attend a series of workshops in eastern Oregon to begin work on the recovery plan after the bull trout was listed in 1998.

Unit 13: Malheur River Basin

71. *Comment:* Two commenters asked about the suitability of habitat for bull trout on the Little Malheur River due to elevated water temperatures.

Our Response: Historical presence of bull trout in the Little Malheur River has been documented by the USFS (1967). Documentation of bull trout occupancy has also been provided by the Burns Paiute Tribe as part of a life history study using telemetry techniques. We agree that stream temperatures are high in the summer in the lower reaches of the stream. However, water temperatures are cool enough during the migration and overwintering time periods to provide habitat for bull trout in the Little Malheur River. The Malheur River Basin unit was excluded from critical habitat based on economic considerations under provisions of Section 4(b)(2).

72. *Comment:* Are Summit Creek, Big Creek, and Lake Creek suitable for bull trout? Does Crooked Creek provide suitable spawning and rearing habitat?

Our Response: In defining spawning and rearing habitat versus FMO habitat

for the proposed designation, we considered the areas for rearing as those areas used by sub-adults, associated with a spawning area. Summit Creek, Big Creek, and Lake Creek are suitable habitat for bull trout from their confluences with the Malheur River to their sources. All three creeks provide spawning and rearing habitat, and all are occupied based on spawning surveys conducted by the USFS, ODFW, and the Burns Pauite Tribe. Bull trout also have been detected in Summit Creek, Big Creek, and Lake Creek during creel surveys conducted since 1968. In the case of Summit Creek, where there is potential spawning habitat in the upper reach, we assume that rearing for at least portions of the year is possible throughout the length of the stream. In effect, there is an overlap in habitat used by sub-adult fish between the definitions for spawning and rearing and FMO habitat.

We recognize that habitat restoration would need to occur to provide good quality rearing habitat. Habitat in Crooked Creek is currently below optimal conditions for bull trout and requires habitat restoration. Crooked Creek has documented bull trout occurrences, and has been identified as essential to conservation of bull trout and to provide for habitat expansion in the draft Recovery Plan. Because bull trout have been documented rearing in Crooked Creek, we know they expand their range into the stream when the opportunity arises. Use of Crooked Creek would primarily occur in the spring time when water temperatures are low, stream flows are high, and bull trout migrate into tributary streams to forage. Only habitat degradation including increased water temperatures and poor substrate conditions prevent them from inhabiting the stream on a regular basis. The habitat in Crooked Creek would primarily be inhabited by rearing and foraging bull trout during seasons of year when bull trout are able to access the habitat. The Malheur River Basin unit was excluded from critical habitat based on economic considerations under provisions of Section 4(b)(2).

73. *Comment:* One commenter asked about the suitability of Bluebucket Creek for bull trout, and another about Warm Springs Reservoir.

Our Response: We anticipate increased bull trout use in the lower reaches of the Middle Fork Malheur River as habitat is restored and the bull trout population increases. The Malheur River Basin unit was excluded from critical habitat based on economic considerations under provisions of Section 4(b)(2).

Unit 15: Clearwater River Basin

74. *Comment:* Silver, Twentymile, and Wing creeks were documented as occupied by bull trout in the South Fork Clearwater Landscape Assessment done by the Nez Perce National Forest. The map in the proposed rule lists these streams as Dl, D2, and D3, although they are not shown on the map.

Our Response: Silver and Twentymile creeks are documented as occupied bull trout FMO habitat. Wing Creek is unoccupied and is not associated with a local or potential population and was removed from the final designation. In addition, the Clearwater River Basin Unit which includes these creeks has been excluded from the final critical habitat designation under provisions of Section 4(b)(2) because of cooperative efforts being undertaken as part of the Snake River Basin adjudication.

75. *Comment:* Why is Freeman Creek listed as critical habitat for bull trout? It is a small tributary of Dworshak Reservoir. There are many other larger tributaries to Dworshak Reservoir that are appropriately not listed as critical habitat for bull trout.

Our Response: Freeman Creek is occupied FMO habitat, but not associated with a local or potential population. The stream is essential as a cold water refugia and foraging habitat during some portions of the summer when the water temperatures of Dworshak Reservoir rise. The Clearwater River Basin Unit which includes Freeman Creek has been excluded from the final critical habitat designation under provisions of Section 4(b)(2) because of cooperative efforts being undertaken as part of the Snake River Basin adjudication.

76. *Comment:* Three commenters stated that rural basin community economies in the Clearwater have experienced serious downturns that are tied to low elk herd populations, no significant timber harvest on either national forest, and that critical habitat could result in timber harvest prohibitions. Elk herds need the early seral conditions that occur after burning, timber harvest, and mechanical treatment of brush fields.

Our Response: There is no landscape prohibition to timber harvest associated with bull trout critical habitat. In waters containing bull trout, land management agencies are required to perform watershed assessments and consult with us to determine what practices would jeopardize or adversely affect critical habitat for listed species. The protection of water quality and riparian corridors that will help bull trout will most likely help other terrestrial species, such as elk. The Clearwater River Basin Unit has been excluded from the final critical habitat designation under provisions of Section 4(b)(2) because of cooperative efforts being undertaken as part of the Snake River Basin adjudication.

Unit 16: Salmon River Basin

77. *Comment:* Studies in upper Salmon River Basin streams and enclosed bodies of water show the majority are occupied by bull trout, the species does not appear to be threatened or endangered in this section of the proposed designation and therefore should not be included in critical habitat.

Our Response: Bull trout in the upper Salmon River basin are still widespread in distribution. Our primary concerns for the species in the area are the lack of habitat connectivity and activities that cause reduced population levels and increased risk of local extirpation. We are required to designate critical habitat for species listed under the Act. Under the Act, a critical habitat designation establishes a geographic area that is essential for the conservation of a threatened or endangered species. The currently on-going 5-year review will evaluate the status of species. The entire Salmon River Basin Unit has been excluded from the final critical habitat designation under provisions of Section 4(b)(2) because of cooperative efforts being undertaken as part of the Snake River Basin adjudication.

78. *Comment:* Why are unnatural stream channels designated as critical habitat, specifically those manmade channels created and used for irrigation withdrawal and delivery?

Our Response: While these manmade channels provide suitable habitat conditions and provide documented spawning and early rearing habitat for bull trout, we determined that the channels are not essential for the conservation of the species, and therefore, they are not included in the final rule.

Unit 17: Southwest Idaho River Basins

79. *Comment:* Are Trail and Kettle Creeks local populations?

Our Response: Trail Creek is part of the Wapiti Creek bull trout local population in the South Fork Payette Core Area (Service, in prep. 2004). While Kettle Creek does contain PCEs, it is not within an identified bull trout local population and is not known to be occupied by bull trout. Kettle Creek was removed from the final designation of critical habitat. In addition, the Southwest Idaho River Basin has been excluded from the final critical habitat

designation under provisions of Section 4(b)(2) because of cooperative efforts being undertaken as part of the Snake River Basin adjudication.

80. *Comment:* There is no evidence that bull trout are migratory in the Weiser River Core Area.

Our Response: At present, bull trout have limited movement throughout the Weiser drainage because of dams, irrigation diversions, and poor water quality conditions. It may not be possible for bull trout to have a migratory component at this time, but the migratory component may have existed prior to human development. The Southwest Idaho River Basin has been excluded from the final critical habitat designation under provisions of Section 4(b)(2) because of cooperative efforts being undertaken as part of the Snake River Basin adjudication.

81. *Comment:* The Service did not consistently designate spawning and rearing habitat below 5,000 ft (1,524 m) in elevation.

Our Response: We are aware of general relationships between elevation and appropriate bull trout spawning and rearing habitat identified in the published (Rieman 1993) and unpublished literature. However, in proposing critical habitat for bull trout, we sought to go beyond reliance on these general relationships and propose critical habitat in areas that are supported by existing information documenting spawning and rearing activity, or inferred based on habitat quality and best professional judgment of biologists with local expertise. We received many pertinent comments relative to the latter basis and have refined this rule accordingly.

82. *Comment:* The Southwest Idaho recovery unit has met recovery because of high bull trout abundance and distribution in some areas.

Our Response: We acknowledge that, within the Southwest Idaho Unit, bull trout abundance is at or near recovered abundance levels in some, but not all, of the subunits and core areas. We also recognize that bull trout are relatively widely distributed in this unit. Current data shows stable or slightly decreasing trends in the Middle Fork Boise River from 1999 to 2002 (Salow and Cross 2003). There are areas that are currently unoccupied that the Recovery Unit Team has identified for assessment relative to the feasibility of establishing additional populations to meet both abundance and distribution goals, however they are not designated as critical habitat in this rule. Many threats to bull trout and its habitat still remain in this area, such as habitat degradation, fragmentation, blockage of migratory corridors, poor water quality, and the introduction of exotic species. The status of this recovery unit will be evaluated further as part of the Service's 5-year review.

83. *Comment:* The Service has not sufficiently addressed impacts to local governments. The collaboration required by the proposals has significant potential to involve segments of the population that historically have not played a large role. The Service did not involve landowners and local government in this rulemaking process.

Our Response: Since 1998, we have consulted with stakeholders and private individuals throughout the range of the species. This comment was from Idaho where the Service has been working through the Southwest Idaho Native Fish Watershed Advisory Group. The IDEQ was in charge of this group until 2002 when the Idaho Office of Species Conservation was assigned the lead. No meetings of this group have been convened since the change in leadership occurred. We did hold nine public meetings and the comment period was opened for 210 days in order to give the public opportunity to provide comments on the proposed rule and draft economic analysis.

Throughout the range, we contacted appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment on the proposed critical habitat for the Klamath River and Columbia River populations of bull trout. We also notified the public of the proposal by placing information in local and regional newspapers, providing this information to the media, and placing it on our bull trout Web site.

Several exclusions are being made under Section 4(b)(2) that acknowledge local efforts including exclusions related to the area being addressed in accordance with the Snake River Basin Adjudication, the Montana Bull Trout Restoration Plan, the Federal Columbia River Power System, the Northwest Forest Plan, and management in accordance with PACFISH/INFISH.

84. *Comment:* A commenter stated that as the Boise and Payette Basins are dependent upon the operation of BOR facilities, modifying the operation of those facilities, through the reallocation of water, will exacerbate flooding and drought conditions.

Our Response: The section 7 consultation process between Federal agencies involves an exchange of information and a balance between fulfilling the action agency's mission and providing for the conservation needs of listed species. As long as the action in question avoids jeopardy to the species there is latitude in carrying out that action. Consequently, we do not anticipate that consultation with the BOR will result in any significant change in project operations relative to drought and irrigation needs. Both the FWS and the BOR are highly concerned with public safety relative to dam operations and water management and will work to avoid any possibility of compromising that safety. We have also excluded reservoirs from the designation in anticipation that third party lawsuits could result in the consequences you identify.

85. *Comment:* A commenter wondered why the cost of the valve replacement project on Arrowrock Dam increased from $5.5 million to a reported $16 million. Was that increase in cost associated with bull trout critical habitat?

Our Response: No. BOR was originally going to open the ensign valves gate and flush all of the water and sediment out of Arrowrock Reservoir into Lucky Peak Reservoir and then later into the Boise River. However, BOR was concerned that the ancient control gate would not close because of its decrepit condition. Therefore, they chose an alternative for valve replacement that was primarily an engineering and safety consideration and not driven by critical habitat or section 7 consultation.

86. *Comment:* Fish screens and alteration to irrigation water delivery on the Little Weiser and the main Weiser River to accommodate bull trout existence, when there is no credible evidence of that species is migratory, would be an economic impact that could put ranchers and farmers out of business.

Our Response: Critical habitat designation does not alter land use or require specific management actions. We do not have documentation of historical presence of bull trout in the Weiser River below its confluence with the Little Weiser River and that area was removed from final critical habitat. In addition, streams in this area were excluded in accordance with provisions in Section 4(b)(2) associated with management of this area in accordance with the Snake River Basin Adjudication.

Unit 19: Lower Columbia River Basin

87. *Comment:* The Service failed to evaluate the section 7 consultation biological opinion for the interim operation of the Lewis River hydroelectric projects.

Our Response: The terms and conditions of the biological opinion included the requirement to record

several conservation easements within 30 days of the FERC issuance of the final order approving the application to amend the license for these projects. However, these conservation easements were not in place at the time of the publication of the proposed rule. Although the proposed designation was not published until November 2002, the biological opinion was not finalized until after the draft proposed rule was in the approval process. These conservation easements are now completed, and we revised the final designation of critical habitat in the Lewis River critical habitat subunit (CHSU) based on the completed conservation easements.

88. *Comment:* All areas above Merwin Dam should be excluded from critical habitat designation because the benefits of exclusion outweigh the benefits of inclusion. The costs in the DEA are outdated because current passage costs through all three reservoirs are estimated to be approximately $156 million and can be attributed to bull trout, salmon, and steelhead.

Our Response: We have taken into consideration all comments regarding critical habitat costs and this information is evaluated in the final Economic Analysis.

We reexamined each segment of proposed critical habitat in the Lewis River CHSU and excluded several stream segments and all reservoirs. In addition, habitat was excluded under provisions of Section 4(b)(2) associated with management of the Federal Columbia River Power System. The Lewis River bull trout local populations are the largest remaining bull trout populations in this CHU.

Unit 20: Mid-Columbia

89. *Comment:* There are socio-political issues (*e.g.*, costs of passage over the dams) regarding passage over the Yakima dams as specified by the draft Recovery Plan, and listing critical habitat above the dams may be inappropriate while passage problems still exist and may continue into the future.

Our Response: There is suitable habitat currently above the dams for multiple local populations. Most are not connected to downstream habitat and that is likely a primary reason why the population numbers are low in most of those local populations. Both FMO and spawning and rearing habitat occur above the dams, and that such habitat is essential to the conservation of the species. The reservoirs likely provide important overwintering and forage habitat which may be one of the reasons that the populations still exist above the dams. Recovery tasks include the identification of problems and establishment of fish passage. Coordinated efforts between BOR, Washington Department of Fish and Wildlife (WDFW), NOAA-Fisheries, the Yakama Nation, Yakima Basin Joint Board, and the Service are currently addressing priorities for establishing passage.

Unit 21: Upper Columbia

90. *Comment:* Is the upper Icicle Creek, above Leavenworth Fish Hatchery designated as critical habitat? If so, why, since there has been a dam cutting off all up and down stream migration for the last 75 years, and how will it affect any new construction adjacent to Icicle Creek?

Our Response: A resident bull trout population occurs in Icicle Creek upstream of the hatchery, and after the planned removal of artificial barriers in Icicle Creek, it is possible that migratory bull trout will be able to access upper Icicle Creek. In 2002, migratory sized bull trout were found upstream of the boulder area at rmi 5.4 (rkm 8.8). Areas along Icicle Creek were excluded from the final designation under provisions of Section 4(b)(2) based on management associated with the Federal Columbia River Power System.

91. *Comment:* Why is the mainstem of the Columbia River included in the designation? Studies have not determined the importance of the Wells Pool to the long-term fitness of the Methow River bull trout population, and have not determined whether the mainstem habitat is essential to the conservation of the species.

Our Response: The mainstem of the Columbia River has been excluded under Section 4(b)(2) based on management associated with the Federal Columbia River Power System. The Columbia River provides important FMO habitat. There is documented use of the Columbia River by bull trout from the Wenatchee, Entiat, and Methow CHSUs (BioAnalysts, Inc. 2002, 2003; Service 2002b, in prep. 2004b). Bull trout from three radio telemetry studies have been documented migrating between the Columbia River and the Wenatchee, Entiat, and Methow watersheds (BioAnalysts, Inc. 2002, 2003; Service 2002b, in prep. 2004b; R.D. Nelle, pers. comm. 2004), including multiple migrations. So use of the Columbia River is part of the migration pattern for bull trout (BioAnalysts, Inc. 2003; Service 2002b, in prep. 2004b).

Adult migratory bull trout have been documented in the Columbia River primarily between October and May (BioAnalysts, Inc. 2003). Overwintering habitat, in particular, is often only used seasonally, and especially if an area has warmer water seasonally bull trout may migrate out. Several bull trout have been documented moving between the Columbia River and the Twisp River, and have used the Wells Pool (BioAnalysts, Inc. 2002, 2003). One bull trout tagged in the Wenatchee River watershed was later located in the Wells pool near the mouth of the Methow River (Service, in prep. 2004). The Columbia River appears to provide essential FMO where a combination of water depth, lower velocities, comparatively warmer water, and availability of food provide suitable habitat for bull trout.

Unit 22: Northeast Washington

92. *Comment:* Because fish passage evidence demonstrates a significant barrier at, or near, Metaline Falls, the critical habitat designation and core areas should reflect this evidence and stop at Metaline Falls.

Our Response: There are no known studies or work to assess fish passage at Metaline Falls prior to the construction of Boundary Dam. Boundary Dam Reservoir now inundates the historic Metaline Falls and provides essential and continuous, suitable FMO habitat from Boundary Dam upstream to Box Canyon Dam. Bull trout currently occupy the reservoir and have been documented by R2 Resource Consultants, Inc. (1998) and Curt Vail and T. Shuhda, USFS, pers. comm. (2001, 2002). This reach of the Pend Oreille River provides FMO habitat and connectivity between Slate and Sullivan Creeks and other tributaries in the Boundary Reservoir, as well as connectivity to upper reaches of the Pend Oreille River and Lake Pend Oreille.

93. *Comment:* The Pend Oreille River critical habitat subsection appears to rely heavily on data that is ambiguous or based on limited, if not single, data points to designate areas of bull trout critical habitat.

Our Response: The Pend Oreille River mainstem is identified as FMO habitat in the final critical habitat rule. The information provided for the Pend Oreille River is summarized from several historical documents (Smith 1936–38; Gilbert and Evermann 1895), independent scientific studies (Ashe and Scholz 1992; R2 Resource Consultants, Inc. 1998; McLellen and O'Connor 2001; Giest *et al.* 2004; J. Maroney, Kalispel Tribe, pers. comm. 2000, 2001, 2002; T. Shuhda, pers. comm. 2004), and biological assessments (Andonaegui 2003), which are cited within the draft Recovery Plan

for the Northeast Washington Recovery Unit (Service 2002).

94. *Comment:* When water temperatures in the summer often exceed 70 °F (21 °C) in the Pend Oreille River, this would preclude the use of the river by bull trout, with the exception of localized colder water areas.

Our Response: We agree. Bull trout are most likely to rely on the Pend Oreille in the late fall, winter, and spring when temperatures are lower.

Bull trout use the Pend Oreille River primarily as FMO habitat, and are documented to migrate to colder water as temperatures increase in mid-summer. For example, bull trout found in the Pend Oreille River below Albeni Falls Dam in August 2003 (Giest *et al.* 2004) moved from cold water inputs into higher temperatures (greater than 70° F (21 °C) for short periods of time to forage or looking for passage. Prior to the construction of dams on the Pend Oreille River without fish passage facilities, adult bull trout likely moved into tributaries, cold water upwellings, or migrated to Lake Pend Oreille as the temperature increased to avoided unsuitable conditions. This is further supported by Idaho Department of Fish and Game (IDFG) (2002), and D. Giest (in litt. 2004) who tracked adult bull trout from the Pend Oreille River to Lake Pend Oreille.

95. *Comment:* One commenter stated that one bull trout observed above the Ione Municipal Dam suggests that it must have been the progeny of a remnant resident population from above the dam, and must be taken as speculation at this time. Cedar Creek, above Ione Municipal Dam, has also been planted with brook trout.

Our Response: In September 1995, one bull trout was observed in Cedar Creek above the Ione Municipal Dam during stream surveys conducted by the Kalispel Tribe (T. Shuhda, pers. comm. 2002). There is no information on the origin or life history form of this fish, but the downstream barrier indicates that this bull trout must have been a product of a spawning population above Ione Municipal Dam (USFS, in litt. 1999c). A second bull trout was found in July of 2003, during brook trout removal. This fish was captured below the dam, and a tissue sample was taken before it was released (Sandy Lembcke, WDFW, pers. comm. 2003), which may help identify its origin. Brook trout were planted across the west and are present in the Pend Oreille basin. WDFW has an active program to remove brook trout in streams where they are negatively impacting native species, including Cedar Creek. There is an annual multi-agency and Tribal effort to remove brook trout by electroshocking and transporting the fish to suitable areas. Furthermore, brook trout do not occur above Ione Municiple Dam and habitat conditions favor native species in the area above the dam.

Cedar Creek contains essential PCEs that support spawning and rearing habitat. The Ione Municipal Dam and water storage reservoir located 1.2 mi (1.9 km) above the mouth of Cedar Creek represents a fish passage barrier in this stream. This storage project was originally built to provide a municipal water source for the City of Ione, Washington, but is no longer used for that purpose. The City of Ione is currently working with other entities to remove the dam and restore fish passage and habitat. Portions of this area have been excluded under Section 4(b)(2) associated with management under PACFISH/INFISH and associated with economic impacts and cooperative efforts associated with segments under 0.5 miles in length that are in private ownership.

96. *Comment:* There is an inconsistency concerning measurements on a number of tributaries between the potential habitat recommended by the Technical Advisory Group (TAG) of the Washington Conservation Commission's Habitat Limiting Factors Report (Andonaegui 2000) and the extent of the proposed critical habitat designation.

Our Response: The TAG and the Service have different objectives and guidelines for establishing bull trout habitat. The TAG has identified areas for restoration activities and we have identified critical habitat that is essential for survival of bull trout. Some discrepancies may also occur from measurement techniques, but are clarified with physical descriptions of starting and ending points. Therefore, the discrepancy is discountable because of different agency objectives and methods.

97. *Comment:* One commenter requested that Tacoma Creek, from rmi 2.0 (rkm 3.2) to rmi 9.0 (rkm 14.5), be changed from FMO to spawning and rearing habitat designation.

Our Response: This area is now considered as spawning and rearing habitat.

98. *Comment:* Should there be two separate PCEs for proposed FMO versus spawning and rearing critical habitat due to the differences in the life stages of bull trout using the different habitats?

Our Response: We considered several approaches to designating PCE's including possibly having separate PCE's for FMO versus spawning and rearing habitat. The PCEs describe those biological features associated with sustaining bull trout populations including spawning and rearing habitat, and as well as habitats to support other life stages and strategies. After careful consideration, we adopted the approach identified in the proposed rule to balance providing specificity with PCE's that applied across multiple areas. We acknowledge that other approaches would be possible.

Comments Related to the Economic Analysis

99. *Comment:* Numerous commenters stated that we neglected to consider the economic consequences of the critical habitat proposal. A DEA must be released for public comment before any proposed or final critical habitat designations are made. Not providing the economic analysis for review before, or at the time the proposed rule is made available, does not meet the requirements of the Act (*New Mexico Cattle Growers Assn.* v. *U.S. Fish and Wildlife Service,* 248 F.3d 1277 (10th Cir. 2001), and does not allow for meaningful public comments.

Our Response: We informed the public in the proposed rule that we would conduct an analysis of the economic impacts of designating these areas as critical habitat prior to making a final determination. We announced the availability of the DEA with a notice in the **Federal Register**, and opened a public comment period on the DEA at that time. The public was able to concurrently review and comment on both the DEA and the proposed critical habitat designation. We subsequently provided this same information when replying to e-mail messages, telephone calls, and during our many public hearings and public meetings held in Montana, Washington, Oregon, and Idaho.

100. *Comment:* Many commenters felt that costs of critical habitat outweighed the benefits and that all costs associated with critical habitat should be included in the analysis.

Our Response: The final rule includes additional areas where the benefits of excluding critical habitat have been determined to exceed the benefit of including these areas in the designation under provisions of Section 4(b)(2) so these areas have been excluded from the final designation.

The primary purpose of the economic analysis is to estimate the economic impact associated with the designation of critical habitat for the bull trout. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation

outweigh the benefits of including those areas in the designation. The economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. The analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. For example, regional management plans, such as the Northwest Forest Plan, PACFISH and INFISH provide significant protection to bull trout and its habitat while imposing significant costs within the region. Economic impacts that result from these types of protections are not included in the assessment as they are considered to be part of the regulatory and policy "baseline.''

101. *Comment:* Costs associated with the operations of agencies such as the Bureau of Reclamation (BOR) to deliver water belonging to irrigation districts must be taken into consideration. The impact of attempting to alter pre-existing legal requirements, and the constraints those legal rights have on designating critical habitat, must be considered before a final decision can be made.

Our Response: All potential costs associated with the designation of bull trout critical habitat, including those related to BOR water management, are addressed through the economic analysis and the associated public comment period.

102. *Comment:* One commenter stated that the economic analysis may substantially change the nature of the proposed critical habitat designation.

Our Response: We agree that, based on the economic analysis, the final designation of critical habitat may be different from that which was proposed. Section 4(b)(2) of the Act requires the Service to designate critical habitat on the basis of the best scientific data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. Based on the economic analysis, we may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

103. *Comment:* One commenter stated that agencies should have an opportunity to review and comment on the draft final critical habitat designation rule.

Our Response: We are bound by a settlement agreement with plaintiffs to finalize the bull trout critical habitat rule for the Columbia and Klamath populations by September 21, 2004. Our process provides the proposed designation and the Draft Economic Analysis (DEA) of that proposal for public comment; we then assess those comments, and revise and finalize the rule accordingly. If we were to provide an opportunity for public comment after each cycle of responding to public comments on the previous proposed rule, the process could go on indefinitely. Additionally, we are bound by a settle agreement with plaintiffs to finalize the bull trout critical habitat rule by September 21, 2004.

104. *Comment:* The DEA minimized the cost of impacts to grazing permittees.

Our Response: The DEA used consultations that occurred between 1998 (when bull trout were listed) and 2002 (when the critical habitat proposal was published) to establish a baseline for predicting future costs. There were only a few consultations available in the record to determine future costs. The consultations did not result in substantial reductions or changes to the permits. Therefore, the estimated cost of future consultations was based on past consultations and determined to be not substantial.

105. *Comment:* Communities and irrigators will be negatively affected by the loss of irrigation water. Ripple effects to local communities were not considered in the DEA.

Our Response: The DEA used consultations that occurred between 1998 and 2002 to establish a baseline for predicting future costs. There was only one consultation available in the record to determine future costs of irrigation modifications due to bull trout listing and critical habitat designation. This single consultation from Oregon resulted in a small reduction in water delivery and did not result in substantial costs to the irrigator. The estimated cost of future consultations and subsequent estimated cost to irrigators was not substantial. "Ripple effects'' due to the costs associated with irrigation were not included in the EA because costs associated with irrigation were not predicted to be substantial. We agree that the assumptions and lack of historic data could have produced an underestimate of the costs to irrigation operators.

106. *Comment:* Several comments suggested that the DEA significantly understates administrative consultation costs to third parties (not Service or Federal Action agencies). Additionally, one commenter felt that the method of determining cost allocation between parties involved in the consultation was unclear.

Our Response: Section 3.1.1 describes the estimation of administrative costs per consultation for the Service, action agencies, and private parties involved in section 7 consultations. Exhibit 3.1 shows that private parties are estimated to incur administrative costs in the consultation process. These costs are estimated to average between $1,200 and $4,900 for informal consultations, and approximately $3,000 to $15,000 for formal consultations. It should be noted that these estimates of administrative consultation costs are average costs. In individual cases, costs bourn by the Service, action agencies, or private parties may be higher or lower than the average estimates given.

107. *Comment:* Several commenters questioned the accounting of actions related to bull trout at the Corps Albeni Falls Dam. One comment stated that the reduced power production at Albeni Falls had not been recognized. Other comments indicated that fish passage costs at Albeni Falls should be identified. Still other commenters wanted the costs associated with Albeni Falls actions included in the DEA estimate of section 7 bull trout costs. A specific comment related to potential downstream flooding stated that costs that may also be due, in part, to the winter "draw-up.''

Our Response: The DEA considers the cost of various management actions at the Albeni Falls Dam in the analysis in section 4.2.3. The winter "draw-up'' at Lake Pend Oreille was first proposed by the IDFG in the early 1990s to benefit kokanee salmon (*Oncorhynchus nerka*) (and indirectly bull trout which prey on the salmon). Based on an update of an estimate developed by the Northwest Power Planning and Conservation Council from the mid-1990s, the DEA reports the cost of lost power production associated with the winter draw-up at $4.4 to $6.7 million per year. This experimental draw-up was proposed and initiated prior to listing and thus is not included as a section 7 bull trout cost.

Fishery passage studies are currently underway at Albeni Falls, and the costs of these studies are included in the range of reported section 7 costs. The potential facility changes at Albeni Falls associated with fish passage are estimated to be $25 million and the costs of two such fish passage facilities are included in the range of future bull trout-related costs associated with the Federal Columbia River Power System (2000) Biological Opinion (BO) implementation (Exhibit 4.36). However, two of these are reported by Bonneville Power Administration (BPA) as "reimbursement account'' expenditures authorized by the Northwest Power Act, and thus are not included as bull trout section 7 costs as discussed in the DEA. With reference to potential downstream flooding costs, the DEA cited a Corps analysis suggesting that one of the possible causes of flooding in the Cusick area may be operations at Box Canyon. Based on the comment, this section has been edited to remove the reference to "the failure of Pend Oreille PUD to follow their agreement with the Calispell Creek drainage district in 1997.''

108. *Comment:* Commenters questioned the impact of the assumptions and statements contained in the DEA regarding the allocation of costs between anadromous species and bull trout. Specifically, several commenters felt the impact of such allocations understated bull trout-related costs in areas where no anadromous species were present.

Our Response: The DEA employed specific assumptions about the allocation of costs between listed anadromous species and bull trout in several cases. In the cases of the Corps Willamette River dams and reservoirs and the BOR Yakima impoundments, costs were allocated based on the number of listed anadromous species. Based on updated information supplied by the BOR, a new allocation for the Yakima system anticipated project modification costs is included in the FEA. Allocations of costs associated with Federal Energy Regulatory Commission (FERC) relicensing and timber harvest were based on case studies from habitat where anadromous species were present, and from studies of habitat with no anadromous species. On average, we believe that forecast annual section 7 bull trout costs are likely high compared with actual future project modification costs. However, there is no question that assumptions will affect the costs and that incorrect assumptions have the potential to underestimate costs.

109. *Comment:* One commenter stated that the DEA focused on impacts to the Service and action agencies leading to an understatement of impacts to private parties, specifically irrigated agriculture.

Our Response: Section 4.1 of the DEA describes the types and magnitudes of annual estimated economic impacts associated with section 7 bull trout consultation, including impacts on private parties, as well as the costs to the Service and action agencies. We are involved in every consultation and incur administrative costs conducting these consultations. The action agencies are also involved in each consultation as it is their actions that trigger the consultation (*i.e.*, Federal nexus). The third group impacted is private parties or State and local agencies. These agencies, businesses, and individuals incur administrative costs associated with consultation, and project modification costs in some cases. Approximately 25 percent of the nearly 10 million dollars estimated annually for administrative costs associated with bull trout consultation activity will likely accrue to third parties. In addition, the discussion of small business impacts includes an analysis of impacts to small entities, including private parties and businesses. This discussion has been modified in the FEA to reflect the impact on irrigators of costs passed on by the BOR associated with bull trout protection in the operation of their dams and reservoirs.

110. *Comment:* Two commenters stated the recent BLM court decision (*Western Watersheds Project* v. *Matejko,* Civ. No. 01–0259–E. BLW (D. Idaho) March 23, 2004) should be considered in calculating costs associated with interrupted irrigation water withdrawals. Another comment suggested that this court decision is unlikely to have any effect on irrigation water rights.

Our Response: Agricultural diversions with a nexus to BLM are discussed in paragraph 318 of the DEA. BLM's position has been that irrigation diversions are not ongoing activities and thus the agency is not required to consult on them. A recent (March 23, 2004) court decision now requires BLM to consult on these diversions. Snake River Basin water rights are still being adjudicated and it will take a number of years for the legal issues to work their way through the courts. However, if there is a final determination that BLM must consult on these diversions there could be a significant cost. At this point, we have no basis for estimating either the timing or the outcome of the decision.

111. *Comment:* The BOR provided new and updated information on costs related to section 7 bull trout consultations at BOR facilities throughout the designation. Specifically, new information on costs associated with trap-and-haul operations at Boise River, Malheur River, Powder River, and Payette River impoundments was presented. Additionally, new information on the likely scope of modifications and range of costs associated with consultation on dams on the Yakima River system was presented.

Our Response: The BOR comments on the DEA bring to light new information on the scope and magnitude of these future consultation-related costs. This new information has resulted in several substantive changes to the estimates in the FEA.

The BOR reduced estimates of annual study and trap-and-haul operations in Idaho and Eastern OR from approximately $250,000 per dam to $250,000 for all dams combined. This change is reflected in section 4.2.4 of the FEA. The other change is in the case of the five Yakima Basin BOR dams where it was assumed that costly upstream and downstream passage would be required for bull trout and steelhead. BOR suggests that a relatively inexpensive periodic trap-and-haul program could meet the needs of the bull trout within the Yakima System. Changes in these passage costs are also reflected in section 4.2.4.

112. *Comment:* One commenter stated that the DEA should consider EPA Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)-related actions in the Coeur d'Alene Basin in the estimated costs for section 7 bull trout consultations.

Our Response: We have identified no specific ongoing or likely future CERCLA-related consultations with associated costs outside of the range of uncertainty reflected in the DEA. As noted in the DEA, in many cases the USFS has maintained the position that in case of remedial actions taken under CERCLA, consultation is not required by the Act.

113. *Comment:* One commenter felt that the DEA failed to consider in its cost estimates for dam modifications and the additional costs associated with engineering and compliance actions.

Our Response: The comment noted that "raw'' construction cost estimates can understate actual total construction costs unless these estimates are inflated to include engineering, design, and compliance costs in the total. The DEA employs this method in the case of dam

modification on the Yakima System. Construction cost estimates for the Yakima dam modifications were multiplied by 1.75 to account for design, engineering, and compliance costs. In the case of the costs associated with Corps dams on the Willamette River, estimated costs of project modifications were based on budget estimates and past similar projects and, therefore, already include the design and compliance cost components.

114. *Comment:* Several commenters noted that the discussion of socioeconomic characteristics of the proposed designation obscured the fact that there are real differences between local areas within the designation. Specifically, it was noted that while mining might account for a small percentage of total income and employment in the designation as a whole, in certain areas or counties it was much more important.

Our Response: We agree that the significant socioeconomic differences between critical habitat units, counties, and communities located within this large designation are variable. Section 2 of the DEA details some of these differences at both the unit level and at the county level, describing differences in income, employment, land ownership, and agricultural characteristics. A more general discussion is presented in section 2 of the role of such activities as mining, timber harvest, grazing, and recreation within the designation. While unit and county level data for these latter activities are not detailed within the DEA, differences in the reliance of specific units on these economic activities are reflected in the unit level estimates of economic costs in Appendix F of the report.

115. *Comment:* Several commenters stated that various projects proposed on Federal land are sometimes dropped from further consideration before the consultation process has even begun due to species concerns. These commenters said the DEA failed to consider the opportunity costs associated with these projects in estimation of total costs. Another commenter noted that some proposed projects are not economically feasible and would never be completed, independent of any necessary consultations or regulations. Therefore, these projects should not be included in estimates of costs associated with the critical habitat designation.

Our Response: A review of the frequency of formal and informal consultations suggests the potential opportunity costs associated with dropped projects are within the bounds of uncertainty associated with the projected number of formals. The number of projected future section 7 consultations involving bull trout is described in section 3.4 in the DEA. The analysis projects a total of 52 formal consultations and 619 informal consultations annually. The data set for the informal consultations is sufficiently large to identify a decline in consultations as the initial workload of ongoing activities is taken care of at listing. Accordingly, the projection for informal consultations is based on the most recent year's consultation data. However, the limited data set on formal consultation results in an uncertain trend, and the annual number of formal consultations projected in the DEA actually exceeds the average annual number during the 4 years following listing. While at the individual project level both commenters may at times be correct, there is no data specific to dropped projects that would allow direct estimation of any such impacts.

116. *Comment:* The sample size for the regression model used in the DEA to estimate total fisheries-related project modification costs at FERC licensed hydroelectric facilities was too small, too imprecise, and provided unreliable estimates of costs.

Our Response: The model is provided as a point of information on total fisheries-related costs. As part of the section 7 bull trout-related costs, the main point of the analysis, are based on average costs. With respect to the model, while the sample is small, the statistics reported are correctly based on the model sample size and degrees of freedom. The small sample size and associated variation in estimates is reflected in the reported 95 percent confidence interval. The alternative is to use the same estimate independent of sample size, which would be contrary to intuition and the statistical evidence.

As noted in the DEA, such a relationship seems plausible given that larger projects are likely to have greater impacts on fisheries and require greater expenditures to remedy these impacts. The hydroelectric power-related sections of the DEA, including the FERC section, were reviewed by a technical advisor on hydroelectric power economics, Dr. Lon Peters of Northwest Economic Research, Inc. Dr. Peters provided feedback on the analytical methodology and the validity of the results. This feedback was then incorporated into the DEA, as appropriate.

117. *Comment:* One commenter felt that the analysis provided no specific estimates for costs related to a bull trout consultation on FERC relicensing of Lucky Peak Dam on the Boise River.

Our Response: Cost estimates for the Lucky Peak facility are included in the DEA. The FERC-licensed Lucky Peak hydroelectric plant is located on the Boise River just upstream of the city of Boise, ID, in the proposed Southwest Idaho River Basins Unit. Although not specifically named, Lucky Peak is one of the 24 "Large Hydro'' facilities for which total cost estimates are provided in Exhibit 4.18 in the DEA. Although not detailed in the report, the estimated section 7 bull trout-related costs for the Lucky Peak hydroelectric plant range from approximately $15,000 to $22,000 per year.

118. *Comment:* One commenter stated that irrigation impacts within the Salmon River Basin Unit related to USFS consultations would be minimal due to the legal structure of water rights within the basin.

Our Response: The potential for USFS irrigation consultations and associated changes in irrigation water use in the Salmon River Basin is discussed in the DEA. The Upper Salmon River is described in the DEA as the primary example of an area where there is potential for future irrigation-related consultations with the USFS. The DEA uses a range of zero to five consultations over the next 10 years (for the entire proposed designation) with an average annual reduction in irrigation withdrawals of 2,656 acre feet per consultation.

119. *Comment:* One commenter stated that the cost of developing HCPs had wrongly been designated a baseline cost and not included in the estimated costs presented in the DEA. Other commenters felt more discussion of the time and money needed to develop HCPs was needed in the report. One commenter alerted the Service to an HCP currently under development in Montana, and provided cost estimates for its development.

Our Response: The costs associated with the development of HCPs are not considered a baseline cost in the DEA. New information on individual HCP development has been provided through public comment, and the estimated costs of developing these HCPs are included in the FEA.

120. *Comment:* Two commenters felt that estimated impacts to grazing leases had been underestimated in the DEA. One disputed the estimated number of future annual grazing consultations, and another felt that impacts to grazing on private lands had been understated. Others felt that the DEA underestimated future section 7 costs related to residential home building activities,

agricultural water users, impacts to motorized recreation on Federal lands within the designation.

Our Response: A number of Federal grazing leases are often covered by a single consultation. Approximately 4 years of consultation history for the bull trout suggest that over the next 10 years, three bull trout consultations with BLM and four with USFS involving grazing activities can be expected. While reductions in grazing stocking levels on Federal leases have the potential to impact associated private land values, changes in stocking levels as reflected in the bull trout consultation record have been few and minor. Estimated costs per grazing consultation are based on a review of the suggested project modifications in past bull trout section 7 consultations, and on information obtained from BLM and USFS representatives on the likelihood that future consultations will be similar in scope and cost.

The analysis of potential impacts to residential development is provided in section 3.4 of the DEA. Our conclusions are based on discussions with, among others, the National Association of Home Builders and the Home Builders Association of Metropolitan Portland, and supported by the consultation record.

Commenters noted that impacts to agricultural water users were likely, due to costs associated with protection of bull trout being passed on by the BOR to individual irrigators or water associations receiving water from BOR projects. The DEA had incorrectly stated that these costs would be born by the Federal government through the BOR. The FEA provides additional language within the section 4.2 discussion of BOR-related impacts to reflect this change. Additional discussion of impacts to irrigators is also included in section 4.3. These changes do not represent a change in the magnitude of estimated annual impacts, but rather in the incidence of the impacts (what groups bear the financial burden of the costs).

Through analysis of past formal consultations involving the bull trout, no significant past impacts to motorized recreation were identified. Conversations with USFS and BLM personnel did not reveal that conflicts between motorized recreation on Federal lands and protection of bull trout would be a source of significant future costs. For this reason, no specific estimates of costs associated with this activity were provided.

121. *Comment:* Many commenters stated the DEA failed to estimate project modification costs associated with informal consultations on bull trout, and costs often arise from an informal negotiation between the Service and the applicant or action agency on the scope or design of a project in order to avoid formal consultation on the action. They noted that although no specific project modifications are laid out within informal consultations, modifications and associated costs occur and should be accounted for.

Our Response: The DEA does not provide estimates of project modification costs for informal consultations. However, administrative costs associated with informal consultations (estimated at $6.9 million annually) are included in the DEA. It is possible that these administrative costs do not represent a significant share of the informal consultation-related costs, however, we have no basis for using any other cost basis. The DEA approach on informal consultations was endorsed by our peer reviewer Dr. Joel Hamilton, who commented that "the draft report does a good job of discussing the issue of informal consultations.'' The largest share of costs corresponding to the proposed critical habitat designation is related to project modifications associated with activities that enter formal consultation (*e.g.*, dam-related consultations). The focus of the DEA on those activities that enter formal consultation is not likely to result in a different ranking of units by relative cost than would occur with a more detailed analysis which includes informal consultations.

122. *Comment:* A commenter stated that the analysis of Federal Highway Administration (FHA) road and bridge costs underestimated costs for Idaho Department of Transportation (DOT), and the method of relying on information from Montana DOT was not applicable to Idaho. The commenter also noted that the Idaho DOT undergoes many "no effect'' determinations for projects, and the costs of these actions are not considered.

Our Response: The basis for predicting the number of annual future formal consultations within the designation is a review of the formal consultation record for the period from listing in 1998 to November 2002. The sample of formal consultations selected, while not from all regions within the designation, represent a cross-section of settings common to FHA projects within the designation. We believe this sample represents a realistic picture of typical consultation-related costs likely to be incurred throughout the designation. Regarding the issue of "no effect'' determinations for projects that may or may not include bull trout concerns, cost estimates provided for informal consultations include the administrative cost of consulting incurred through these "no effect'' analyses, and the associated letters of concurrence from the Service.

123. *Comment:* Many commenters stated that the DEA analysis was too narrow in that it failed to recognize all of the indirect effects associated with bull trout consultations. Indirect impacts or costs include impacts to downstream water users, river transportation, downstream power producers, other species, costs to the Federal government of settling "takings'' cases, and costs associated with conducting profitability analyses on mines involved in section 7 consultations.

Our Response: We agree that there are indirect impacts associated with bull trout consultations. However, the most significant of these, impacts to downstream power producers, have been quantified, and the other indirect impacts are likely to not be significant.

Impacts on downstream power producers are included in the section 4 estimates of costs associated with shaping salmon flows at Libby and Hungry Horse Dams to benefit bull trout as well as changes in Albeni Falls operations to benefit kokanee, and indirectly bull trout. Regarding impacts to downstream river transportation, the water volume impacts associated with bull trout protection are extremely small in the context of total stream volume on navigable waters. In the case of shaping flows from Libby and Hungry Horse Dams, the possible navigation impacts are further minimized by the releases running through large storage reservoirs (Grand Coulee Dam) before reaching the navigable portion of the river used by most commercial transportation. Furthermore, given the preponderance of Federal land in the designation, and the general location of proposed critical habitat, it is not foreseeable that significant costs associated with new State and local regulations, project time delays, or stigma will result from the designation.

124. *Comment:* One commenter noted that the DEA relied on current Service policy to favor negotiation rather than irrigation restrictions in cases of impacts to bull trout. The Service could change this direction at any time and render the estimates of losses to irrigators presented in the DEA invalid.

Our Response: The commenter is correct in noting that responses by the Service to threats to the bull trout or its habitat could possibly change from one of "dialogue and negotiation'' and use of

"prosecutorial agreements'' to reduce illegal take to more direct action, which could involve reducing irrigation withdrawals in some cases. It was in recognition of this potential change that the estimated costs associated with future limitations of withdrawals is presented as a range, from zero to $1.6 million per year (based on five cases of limited irrigation withdrawals). The potential for these types of irrigation reductions is also constrained by the location of many, but not all, diversions. Many diversions are located on mainstem rivers, and the location of these diversions and their operation often present no conflict with protecting bull trout. This is because the bull trout only use the mainstem rivers to over-winter, while irrigation diversions and the potential for dewatering mainly occur in the summer and fall. The FEA clarifies the potential conflicts between bull trout protection and irrigation withdrawals.

125. *Comment:* A number of commenters stated the DEA incorrectly assumed that irrigators within the designation could purchase replacement water for their crops or livestock if they were to lose diversion rights to instream flow requirements.

Our Response: Project modification costs related to reductions in irrigation withdrawals are discussed for the BOR nexus and USFS nexus in the DEA. The value of foregone water use for BOR is based on marginal prices in the irrigation water market that has developed in the Yakima basin. The value for water for the USFS nexus is based on the high end of water lease purchases made by the Washington Department of Ecology. While these values are based, in part, on purchases, they are reflective of the opportunity cost of foregone water use (*e.g.*, the value of crop losses) and are consistent with other approaches to valuing water, such as a production function or farm budget approach. Accordingly, their use in the DEA is consistent with the case where the irrigator loses the use of the usual source of water and is unable to purchase water elsewhere (the irrigation-related increment to production is lost). The agriculture irrigation-related sections of the DEA were reviewed by a technical advisor on agriculture and water resource economics, Dr. Joel Hamilton, Emeritus Professor of Agricultural Economics and Statistics at the University of Idaho. Dr. Hamilton reviewed the analytical methodology and the validity of the results, and opined that the value of $40/ac-ft for BOR water was appropriate and that the value of $127/ac-ft for USFS water likely overestimates the USFS-related section 7 impacts.

126. *Comment:* Several commenters stated that more contacts with private individuals and small businesses should have been included in the analysis.

Our Response: A wide variety of data sources are utilized in the DEA. The data sources relied upon are detailed in footnotes throughout the report, and discussed in section 1.4. Wherever possible, information provided by informed parties was confirmed by published data sources. Given the large geographic scope of the designation and analysis, however, extensive contacts with individual small businesses and private parties throughout the designation were not possible. The FEA is based on the best available information, which includes discussions with informed parties and stakeholders, as well as published data sources. The DEA was reviewed by three independent technical advisors: Dr. Joel Hamilton, Emeritus Professor of Agricultural Economics and Statistics, University of Idaho (agriculture economics); Dr. Lon Peters, president of Northwest Economic Research, Inc., a Portland-based firm that provides economic consulting services to electric utilities (hydroelectric power economics); and Dr. Roger Sedjo, senior fellow and the director of Resources for the Future's forest economics and policy program (timber economics). Their feedback was incorporated into the FEA, as appropriate.

127. *Comment:* A number of commenters noted that many costs associated with modifications to BOR dams and reservoirs are passed on to irrigators receiving water from the impoundments, and the DEA suggested that these costs were borne entirely by the BOR.

Our Response: The DEA incorrectly assumed all section 7 bull trout costs associated with BOR impoundments would be borne by the agency. In fact, in many cases, these costs are passed on to the irrigators benefiting from the projects. This fact has been included in the discussion of the costs associated with BOR facilities in the FEA, along with new information on costs associated with bull trout project modifications at BOR facilities throughout the proposed critical habitat designation.

128. *Comment:* Two commenters suggested the need to consider costs associated with National Pollutant Discharge Elimination System wastewater discharge permits. Additionally, significant costs in the closure of the Hecla Grouse Creek Mine could result from EPA consultation on Idaho Statewide water quality standards.

Our Response: Ongoing costs related to consultation at the Hecla Grouse Creek mine within the Coeur d'Alene Unit and the Thompson Creek Mine within the Salmon River Unit have been incorporated into the FEA discussion of mining impacts. Certain general annual cost estimates associated with these operations have been incorporated (an estimated $62,000 per year for each of the two mines). There is much uncertainty regarding potential costs associated with Service and National Oceanic and Atmospheric Administration (NOAA-Fisheries) consultation with EPA on Statewide Idaho water quality standards. There is no currently available information indicating that this consultation will conclude with new or interim standards that will significantly impact the final reclamation costs of the Hecla Grouse Creek mine. To be included in the DEA, costs have been reasonably foreseeable within the 10-year time frame of the analysis.

129. *Comment:* Several commenters stated that estimated costs to recreation were underestimated in the DEA, such as the loss of recreational fishing opportunity associated with any removal of existing brook trout populations from areas of bull trout critical habitat.

Our Response: We do not believe these costs are understated as offsetting improvements to other fisheries have resulted from fisheries management-related actions. Such actions are among the specific activities consulted on by a number of agencies. Opportunity cost estimates for formal consultations are described in section 4.

130. *Comment:* Several commenters stated the DEA had not sufficiently estimated or had underestimated impacts to small businesses, private landowners, developers, or State and local entities. The small business analysis contained within the DEA did not fully address impacts to small businesses and small communities

Our Response: The small business analysis is provided in section 4.3 where impacts to agricultural producers, hydroelectric utilities, and miners are identified and quantified. The general focus of the comments was on the failure of the DEA to quantify the economic impacts on a particular subunit, community, local economy or local economic sector. None of the specific entities identified are ones for which there is evidence of substantial or clearly defined impacts from the proposed designation over and above the impacts already identified and

quantified in the referenced sections of the DEA.

131. *Comment:* Several commenters stated that the use of a 10-year time frame for consideration of most impacts estimated in the DEA was too short. Alternative time frames from 20 to 50 years were suggested.

Our Response: To produce credible results, the economic analysis must consider economic impacts that are reasonably foreseeable. Based on available data, the 10-year time frame used in the DEA for the majority of activities was most fitting for this analysis. In cases where more certainty exists as to future consultations, a longer 50-year time frame was employed. Given the information available from action agencies on likely levels of future projects, we believe the 10-year time frame to be most appropriate for all non-FERC-related consultation activity.

132. *Comment:* A large number of commenters stated that the overall estimates presented in the DEA were too low. Alternatively, two comments were received suggesting that the estimates were too high.

Our Response: While different commenters felt that the estimates in the DEA were either too high or too low, we concur with the judgments of our peer reviewers that the estimates are high. The DEA was reviewed by three independent technical advisors, and were each asked to read sections of the draft report, and provide feedback on the analytical methodology and the validity of the results. The peer reviewers found the approaches used to analyze impacts generally appropriate, and in the case of USFS-related irrigation and timber impacts, the analytical methodology likely overestimates section 7 impacts.

133. *Comment:* Multiple commenters stated that the methodology used to account for impacts to unoccupied habitat in the DEA underestimated impacts, specifically in units with a significantly higher percentage of unoccupied habitat than the average for the entire designation.

Our Response: Unoccupied habitat has been removed from the final designation. We disagree with the comment as the procedures used to estimate costs relevant to unoccupied habitat are theoretically and computationally sound. The methodology used in the DEA to inflate estimated consultation and project modification costs predicted for occupied bull trout critical habitat is presented in two places within the body of the report, and the estimated annual cost for each unit is adjusted for the respective percent of unoccupied habitat for the unit. For example, the Hells Canyon Complex Unit is estimated to have total annual consultation-related costs of $1.9 million to $2.3 million. Of this amount nearly half ($0.9 million to $1.1 million) is attributable to unoccupied habitat. Across units, the percent of unoccupied habitat ranges from zero to 72 percent.

The computation in the DEA related to unoccupied habitat is based on the assumption that the future consultation rate in unoccupied habitat will occur at the same rate as observed for occupied habitat in the past. If anything, this approach is likely to overstate future consultations in unoccupied habitat for three reasons: (1) The DEA measures coextensive costs, and the designation of critical habitat in currently unoccupied habitat is unlikely to increase consultations in this type of habitat related to listing; (2) the past consultation record actually includes some consultations in unoccupied habitat, yet these are all allocated to occupied habitat for purposes of computing a consultation rate (which leads to an overstatement of the actual rate of past consultation on occupied habitat); and (3) unoccupied habitat in the proposed designation is almost entirely "unknown occupancy.'' Some share of these areas may have no bull trout present now, or in the future, which will limit the impact and rate of consultations in these areas relative to occupied habitat.

134. *Comment:* Several commenters noted that estimates for a number of activities presented a wide range of costs which limits the usefulness of the results of the analysis.

Our Response: Three specific activities (USFS timber harvest, irrigation diversions, and FERC hydroelectric relicensing) have a large range in the estimated project modification costs. The source of this variation is the real uncertainty which is associated with future locations and costs of projects involved in these activities.

135. *Comment:* Several commenters questioned the estimates of impacts to placer, lode, and suction dredge mining presented in the DEA, as well as the validity of assumptions use, in the John Day River Basin and Hells Canyon Complex Units.

Our Response: The DEA estimates that approximately 100 formal consultations on placer operations in these drainages will occur during the 10-year analysis period (five annually, per drainage). This estimate is consistent with authorization of existing mines in the drainages as their typical 10-year permit expires. In both the North Fork John Day and the Powder River Drainages, recent BOs for ongoing operations covering a large number of mines suggests that there is no significant backlog of formal mining consultations in these areas. The DEA estimated mining-related project modification costs in eastern Oregon associated with specific terms and conditions from BOs.

Additional information received through the public comment period shows the DEA was in error in attributing in-stream work window limitations to bull trout consultations. The in-stream periods referenced in the terms and conditions of the mining BOs are actually ODFW regulations that protect fish and wildlife resources. The reference to them in bull trout BOs is simply to further endorse compliance with these windows. Costs estimated with these instream windows have been removed in the FEA to reflect the nature of the baseline for these regulations. Costs associated with constraints on stream crossings are still included in the FEA, and these costs are likely to range from zero to several thousand dollars per year. An estimate of $500 per year per operation is used in the analysis.

136. *Comment:* One comment letter asked why the DEA contained no analysis of potential costs associated with the Post Falls Dam.

Our Response: The Post Falls Dam, owned by Avista Corporation, is located approximately 9.0 mi (14.5 km) below Lake Coeur d'Alene. The hydroelectric plant is not located on water currently proposed as bull trout critical habitat, nor does its operation directly affect downstream critical habitat.

137. *Comment:* Several commenters wanted to know: (1) If BPA agrees with the estimates of Columbia River hydroelectric generation impacts presented in the DEA; (2) if the costs associated with shaping salmon flows out of Libby and Hungry Horse Dams to benefit bull trout was included in the total cost estimates presented in the DEA; and (3) how were the costs associated with FERC relicensing derived?

Our Response: The estimated Columbia River hydroelectric generation impacts reported in the DEA were provided by BPA. Costs associated with shaping salmon flows are included in total bull trout-related costs as $2.0 to $4.0 million per year (based on BPA references at footnote 124). These costs are not section 7 bull trout-related costs as BPA includes these costs in its accounting for expenditures authorized by the Northwest Power Act. Costs for FERC relicensing were derived by

developing case studies of all completed hydro relicensing consultations (as well as others that are either near completion or provide additional information), and using the average section 7 bull trout-related costs from these case studies as an estimate for future consultations. Future consultation timing and frequency are based on the FERC relicensing schedule.

138. *Comment:* One commenter felt that the use of profitability in assessing impacts to placer, lode, and suction dredge mining was incorrect, and should be based on spending by miners in local communities.

Our Response: The general lack of data on production and expenses for small scale placer or lode operations in the region make estimation of profitability from these mines difficult. In an industry where operators may not report revenues or expenses in an organized or consistent manner, we believe the procedure used to estimate impacts in the DEA provides the most direct estimate of lost value to the miners.

139. *Comment:* Several commenters stated that the DEA downplayed the role of traditional resource-based jobs in small rural communities, and the loss of these jobs is economically and socially difficult for rural communities.

Our Response: The commenters are correct in pointing out that shifts in economic base can be difficult for some rural areas, and economic change can negatively affect small rural areas. Within the Interior Columbia River Basin, while some areas within the region have seen tremendous economic growth in recent years, the economic output of other more rural counties has been stagnant or shrinking. Rural counties frequently have an even higher dependence on agricultural production than the regional or even State-level statistics suggest.

140. *Comment:* Many commenters faulted the DEA for only performing a regional economic impact analysis for impacts in the Yakima drainage.

Our Response: After reviewing these comments, we conclude that our level of effort on regional economic modeling was appropriate. The DEA presented analyses of impacts associated with critical habitat designation for the bull trout using two different accounting frameworks, which included an economic efficiency framework and a regional economic impact framework. A commonly used method of estimating regional economic impacts is I–O modeling. The DEA relied on published I–O model results in its analysis of impacts to the Yakima Basin from reductions in available agricultural water. I–O modeling is only appropriate where anticipated economic impacts are substantial and clearly defined as to the local area of impact. While many of the estimated impacts associated with critical habitat designation contained in the report (*e.g.*, timber, mining, agriculture water) are substantial when considered for the entire designation, the potential locations of these estimated impacts are extremely uncertain. Without an acceptable level of certainty as to where impacts might occur within the designation, definition of the relevant area of economic analysis for the I–O model is impossible. It would be possible to model all estimated impacts in the context of the economy of the entire designation. However, the results of this model would show trivial impacts in comparison to the large and growing economy of much of this four-state region. The DEA presented regional economic impact estimates for the one area (Yakima Basin) where predicted impacts were reasonably foreseeable and substantial.

141. *Comment:* Several alternative analyses of potential losses to local area economies were presented by commenters for the Klamath River Basin Unit, in Baker County, OR, and the Deschutes River Basin Unit. These analyses provided detailed impact information at the subunit level, and, in each case, are driven by an assumed level of change in some base sector of the local economy.

Our Response: The referenced comments provide detailed and analytically appropriate analyses of economic impacts. However, the first step in these analyses is missing in that evidence consistent with observable data is not presented for substantial and clearly defined changes to the base economic sectors that derive from the proposed designation. Specifically, the assumed reductions in economic output based on irrigated agriculture (for example, ranging from 0 to 90 percent in the Deschutes River Basin and 25 to 60 percent in Baker County) are not supported by the historical record or expectations regarding the outcome of future actions to protect the bull trout. We conclude that the level of detail and scope in the DEA regarding local economic impacts is appropriate.

A detailed regional economic modeling effort may be appropriate when economic impacts of the proposed designation are substantial and clearly defined in the analysis. The estimated impacts presented in the DEA for the Deschutes River and Klamath River basin units and Baker County area are consistent with the pattern of bull trout consultation impacts in these areas as adjusted for the extent of unoccupied habitat within the units. The local area impact analyses presented by the commenters provided detailed information on the socioeconomic structure of these local areas. The analyses were theoretically appropriate and well presented. In our opinion, however, the estimated impacts (driven by assumed exogenous shocks to local economies) are not consistent with the observable impacts of several years of formal consultation activity on the species. For this primary reason, the methodology and estimated results presented in the DEA were retained in the FEA.

142. *Comment:* Several commenters asked why a number of additional formal bull trout consultations were not cited in the DEA.

Our Response: A census of formal bull trout section 7 consultations, from the listing of the species in 1998 to the proposed designation of critical habitat in November 2002, was collected and analyzed for the DEA. Formal consultations on the species continue, and some of the formal consultations that commenters noted were missing from the DEA occurred after the end date for the census of consultations performed for the economic analysis (November 1, 2002). The analysis of costs associated with section 7 consultation on the bull trout relied on a broad sampling (and for some activities a census) of formal consultations. In cases where significant consultation activity (not represented by the consultation record examined) occurred after November 2002, these new consultations were considered in the final analysis. In other cases, where new consultations represented only a continuation of the frequency of past consultations for an agency or activity, these consultations were estimated to have no significant impact on the estimated impacts in the DEA.

143. *Comment:* Several commenters questioned the appropriateness of the water values used in the analysis. Some thought the values used were both too high and others thought they were too low.

Our Response: We disagree with the view that water values used in the DEA are too low. It is possible that the estimates used to value irrigation water withdrawals with a USFS nexus are high. Two different estimates of the value of lost agricultural water were utilized in the DEA. In the discussion of potential impacts to agricultural water users within the Yakima Basin, the DEA cites an average marginal value of $40 per acre foot for water diverted from

agricultural production to be used in instream flow protection. This value, from a report by the Montgomery Water Group (footnote 164), represents the estimated marginal value per acre foot to agricultural production within the basin for a reduction of 48,000 acre feet.

While it is acknowledged that marginal water value to some producers of higher value crops may exceed the average $40/af value used, other producers may have a marginal value less than the $40. The Center for Watershed and Community Health, Portland State University report cites 22 recent water leases for instream flows in Oregon that averaged $23/af. The report also cited seven water leases or purchases in Washington ranging from $27 to $79/af. The $40 value used in the DEA is not based on observed water transfers within the basin, but on an analysis of the marginal productivity of water within the Yakima Basin. A second value used in the analysis of losses potentially associated with reductions in agricultural water diversions on USFS lands was $127/af. The BOR suggested a value in the range of $50 to $75/af. In the case of USFS diversions, the arguably high $127/af was used in recognition of the large degree of uncertainty as to where and when such reductions might occur, and what types of land uses would be affected. The $127/af is based on actual observed sales of water rights reported by the State of Washington Department of Ecology. In summary, the $40/af value was used for the Yakima Basin analysis because it was from a current comprehensive study of water use and values within that basin, and as such, represented the best information available for that region. For valuing water in USFS diversions, the $127/af was used because of uncertainty about the location of impacts, and a lack of site specific water values for all possible alternative impact areas.

144. *Comment:* Numerous commenters were concerned about the deletion of a discussion of potential economic benefits associated with bull trout critical habitat from the DEA prior to public release of that document.

Our Response: Our Division of Economics removed the 59-page benefits analysis from the DEA because of concerns over the methods used. These methods are known as contingent valuation and benefits transfer.

A contingent valuation involves asking someone how much they would pay to continue a specific activity that is threatened by pollution or other factors. For example, one might ask an angler how much he or she would spend to continue fishing for bull trout in clean rivers. Some economists doubt the accuracy of such analyses because of their hypothetical nature and because respondents do not have to follow up their answers with actual payments. Therefore, they may tend to over-value the benefit.

The DEA's discussion of the value of bull trout recreational fishing is a benefits-transfer analysis. Benefits-transfer analyses use research conducted for one species or purpose to extrapolate results for another species or purpose. Although benefit-transfer analysis can provide a quick, low-cost approach for obtaining desired monetary values, the methods are often associated with uncertainties and potential biases of unknown magnitude and should not be used without explicit justification.

We must remember what these analyses are used for helping the Secretary to decide whether to exclude areas and whether the exclusions outweigh the conservation benefits of inclusion. So, we are looking at the burden on the public of the regulation, and whether any areas have a disproportionate burden. We balance that against the benefits of including that area—including the benefits of the area to the species and the benefits of the species' existence and recovery. We do this in the 4(b)(2) discussion in our rules. We believe that monetizing trivializes benefits because there are no widely accepted ways for placing a dollar value on a biological benefit.

Comments From States

Section 4(i) of the Act states, "the Secretary shall submit to the State agency a written justification for her failure to adopt regulation consistent with the agency's comments or petition.'' Comments received from States regarding the proposal to designate critical habitat for the bull trout are addressed below.

Oregon

State Comment: In Unit 1, Upper Klamath Lake CHSU, what was the rationale for designating critical habitat on West Canal in the Upper Klamath Subunit?

Our Response: The landscape along the west side of Agency Lake has been heavily modified. Sevenmile and West canals intercept flows from Sevenmile Creek and Canal, Fourmile Creek and Slough, Crane and Crystal Creeks, and Cherry, Rock, and Threemile Creeks, and provides connectivity between these streams and Agency Lake. Since West Canal is now the only aquatic connection between isolated populations of bull trout in these headwater streams and winter foraging habitat in Agency Lake, it is included in the designation.

State Comment: In Unit 1, Upper Klamath Lake CHSU, there is no Heavenly Twin Lake in this unit. There is a Big Heavenly and a Little Heavenly Twin Lake. There may be a hydrologic connection at some time during the year, most likely during snowmelt.

Our Response: Critical habitat maps were compiled from various sources. We relied predominantly on StreamNet as the largest and most readily available database. USFS databases were also used where stream data was not available in StreamNet. Additionally, many maps (including those generated by the State of Oregon (Klamath-Lake Forest Protection District, Oregon Department of Forestry, 1995) and the USFS (1994) do not differentiate between Big and Little Heavenly Twin Lake, but rather refer to them collectively as Heavenly Twin Lakes. Based on additional review, it appears that stream flows in Rock Creek becomes seasonal above the 5,400 ft (1,645 m) contour. Therefore, on reconsideration of available data, we concur that the connection between the Heavenly Twin Lakes and Rock Creek is not suitable for inclusion in critical habitat.

Idaho

State Comment: In the Coeur d'Alene Lake CHSU, bull trout in the St. Joe system primarily use the upper basin (Mosquito Creek) for spawning and rearing. Achieving the stated recovery target for the St. Joe (800 adults) will likely require more than eight streams, yet a number of tributaries to the St. Joe (downstream from the North Fork) are not likely to ever support spawning and rearing. It is not clear why Eagle Creek is proposed while other nearby streams with similar characteristics are not.

Our Response: Eagle Creek contains PCEs and was proposed for critical habitat because it has recent and historic observations of bull trout. Portions of Eagle Creek have been excluded under provisions of Section 4(b)(2) associated with management conducted in accordance with PACFISH/INFISH. The primary reason why Skookum Creek (and other nearby streams that are tributaries to the St. Joe with similar characteristics) were not proposed as critical habitat is because we were not aware of bull trout being observed there either presently or historically (Fields 1935; Service 2002). With at least 16 other tributary streams or stream reaches known to have reproduction occurring in recent years, proposing Skookum Creek and other

habitats was not considered essential to the conservation of the species.

Washington

State Comment: WDFW electrofished several locations of the Little Tucannon in 2002 to try to find bull trout after the technical review team indicated possible use, but did not locate the species. Please check your reference to ensure this statement is correct, as WDFW has no knowledge of bull trout in the Little Tucannon River.

Our Response: The USFS in litt. (2002) documented a single bull trout in the Little Tucannon River stream survey report near the end of reach II. This report concluded that the Little Tucannon River is in good to excellent condition overall and provides excellent fish habitat for both native and migrating fish species. The Little Tucannon River is also identified in the Draft Snake River Washington Recovery Unit Chapter as a priority stream. While reproduction is not known to occur presently in the Little Tucannon River watershed, it is important to the conservation of bull trout in the Tucannon River Core Area as it likely provides suitable habitat for rearing, cold water refugia, and foraging. The Little Tucannon River watershed may also provide habitat to expand the spawning distribution and abundance of bull trout in the core area. Portions of Little Tucannon River have been excluded under Section 4(b)(2) associated with management in accordance with PACFISH/INFISH.

State Comment: The South Fork of Asotin Creek was not included in the proposal. If George Creek and some of its tributaries are included as critical habitat based on possible use presently, or in the future, the South Fork should also be included. It has potential for at least bull trout foraging, if not spawning and rearing.

Our Response: During the recovery planning process, the South Fork of Asotin Creek was described as not having bull trout as they were not observed during snorkeling surveys in 1993 (USFS, in litt. 1993). Also during the recovery planning process, the South Fork of Asotin Creek was not identified as a priority stream essential for the recovery of the species. Therefore, this stream is not considered to be critical habitat.

State Comment: No bull trout have been documented in Hefflefinger and Wormell Creeks. They are small streams that do not appear to have suitable habitat for bull trout spawning or rearing, and may not be appropriate for listing as critical habitat.

Our Response: We concur and we have removed these streams from the final critical habitat designation.

State Comment: Charlie Creek is used by bull trout, but since much of the upper portion of the stream is dry, or nearly so, in the summer, we recommend terminating the upper extent at the east edge of section 7, Range 43 East, Township 9 North.

Our Response: Several miles of Charlie Creek have been excluded under provisions of Section 4(b)(2) associated with management in accordance with PACFISH/INFISH. Even though the stream channel is dry or nearly dry during the summer, it provides important habitat during other times of the year, and during wet years when it maintains more flow. Also, because Charlie Creek is clearly essential to water supply during the summer as well as other seasons, protecting the channel morphology and watershed upstream of the spring is essential. For example, if an activity significantly increased bedload movement and fine sediment transport in the upper extent of the stream which is recommended for removal, the spring could be altered (filled or capped).

Montana

State Comment: Dry Gulch, a tributary to Granite Creek in the Lake Pend Oreille watershed, and Copper Creek, a tributary to the Bull River watershed in the lower Clark Fork drainage, should be removed from critical habitat because they are intermittent streams that do not provide spawning or rearing habitat.

Our Response: Dry Gulch was initially included due to the information provided in the Lake Pend Oreille Bull Trout Conservation Plan produced by the State of Idaho. Copper Creek initially was included due to the information provided in the Montana Bull Trout Scientific Group (MBTSG) status report produced by the State of Montana. Further information indicates the commenters are correct and the streams have been removed from the final rule.

State Comment: In Montana, project benefits from three water storage projects, such as protection of instream flow and mitigation of warm downstream water temperatures, were not analyzed. The high potential costs of critical habitat designation that may affect release patterns should result in exclusion of these projects.

Our Response: Habitat in Montana has been excluded under provisions of Section 4(b)(2) in support of cooperative partnerships with the State and recognition of their intent to carry out positive measures for Bull Trout consistent with their Bull Trout Management Plan developed in 2000.

State Comment: In Montana, Sophie Lake and its tributary Phillips Creek should be omitted from the final rule based on the questionable population status of bull trout, inconsequential scope of this small and isolated core area to overall recovery, relatively hostile existing habitat, chronic dewatering, nonnative fish species competition, and the lack of a Federal nexus to promote habitat improvement.

Our Response: Habitat in Montana has been excluded under provisions of Section 4(b)(2) in support of cooperative partnerships with the State and recognition of their intent to carry out positive measures for Bull Trout consistent with their Bull Trout Restoration Plan developed in 2000.

Summary of Changes From the Proposed Rule

In development of this final designation of critical habitat for the Klamath River and Columbia River populations of bull trout, significant revisions to the proposed critical habitat designation were made based on review of public comments received on the proposed designation, the DEA, and further evaluation of existing protection on lands proposed as critical habitat. These revisions rely on legal authorities and requirements provided in the Act.

In crafting the Act, Congress provided guidance for the exercise of discretion by the Secretary in making critical habitat decisions, which we have applied in this rulemaking. In section 3(5)(a) of the Act, critical habitat is defined as "(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.'' Section 3(5)(C) of the Act further provides that "Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.'' These provisions of section 3 authorize the exercise of discretion in determining (1) whether special management considerations or

protections may be required; (2) whether unoccupied areas are essential for the conservation of the species; and (3) the extent to which the entire area which can be occupied by the species should be included in critical habitat. Finally, section 4(b)(2) of the Act allows the Secretary to exclude any area from critical habitat, after considering the economic impact and any other relevant impact, upon a determination that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species concerned.

The Congressional record is clear that Congress contemplated occasions where the Secretary could exclude the entire designation. In addition, the discretion that Congress anticipated would be exercised in Section 4(b)(2) of the Act is extremely broad. "* * * The consideration and weight given to any particular impact is completely within the Secretary's discretion * * *''

Given that section 4(a)(3)(A) of the Act requires that critical habitat be designated concurrently with making a determination that a species is an endangered species or a threatened species, we are mindful of the Congressional intent with respect to listing as we designate critical habitat. For example, section 4(a)(1) of the Act (16 U.S.C. 1533(a)(1), states that we must consider in listing determinations, among factors, "the inadequacy of existing regulatory mechanisms'' (so-called "Factor D''); and "other natural or manmade factors affecting its continued existence'' (referred to as "Factor E'').

Section 4(b)(1)(A) requires us also to "tak[e] into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.'' Read together, sections 4(a)(1) and 4(b)(1)(A), as reflected in our regulations at 50 CFR 424.11(f), require us to take into account any State or local laws, regulations, ordinances, programs, or other specific conservation measures that either positively or negatively affect a species' status (*i.e.*, measures that create, exacerbate, reduce, or remove threats identified through the section 4(a)(1) analysis). The manner in which the section 4(a)(1) factors are framed supports this conclusion. Factor (D) for example—"the inadequacy of existing regulatory mechanisms''—indicates that overall we might find existing regulatory mechanisms adequate to justify a determination not to list a species. Factor (E) in section 4(a)(1) (any "manmade factors affecting [the species'] continued existence'') requires us to consider the pertinent laws, regulations, programs, and other specific actions of any entity that either positively or negatively affect the species. Thus, the analysis outlined in section 4 of the Act requires us to consider the conservation efforts of not only State and foreign governments but also of Federal agencies, Tribal governments, businesses, organizations, or individuals that positively affect the species' status.

The section 4 analysis for listing determinations is relevant to our exercise of discretion in critical habitat designations, although it must be stressed that analysis in no way limits the Secretary's discretion.

Summary of Revisions

The following section discusses changes made from the proposed critical habitat rule:

(1) Unoccupied lands were removed from the designation. Under the Act the Secretary of the Interior may only include unoccupied lands if she finds that those lands are essential to the conservation of the species. In the case of the bull trout, and based on the best scientific data available, it was not possible for the Secretary to make such a determination at this time.

(2) The largest changes in area designated are those lands which do not meet the requirement of needing special management or protection and which are also excluded due to the exercise of the Secretary's Authority under section 4(b)(2) of the Act. Exempted under these provisions were:

(A) Federal Columbia River Power System (FCRPS),

(B) Northwest Forest Plan,

(C) Lands included in the State of Washington's Forest Practices Rules and Regulations,

(D) Lands covered by the Snake River Basin Adjudication, lands covered under the Montana Bull Trout Restoration Plan, the Willamette and Malheur River Basins, and stream reaches regulated under PACFISH/INFISH,

(E) All waters impounded behind dams (reservoirs and pools),

(F) All stream segments less than 0.5 mi (0.8 km) in length that are under private landownership, and

(G) Approved habitat conservation plans.

(3) Lands that did not contain sufficient PCEs to support the species normal activities were removed. For example, the Clark Fork River between Missoula and Butte was proposed for designation. Upon further review, it was determined that this site is a superfund site subject to contamination by leaching from mine wastes. At some point the habitat may be useful to bull trout, but it is unlikely to be so today. Another example is the middle fork of the Boise River, also proposed for designation and also subject to leaching of mining wastes. Proposed critical habitat that did not contain sufficient PCEs to support the species was removed, as was critical habitat where the presence of PCEs was speculative. The Act does not provide for speculative or prospective use of habitat.

(4) The proposed critical habitat designation included a number of reaches to increase connectivity between populations. We received multiple comments that some of the barrier removal proposed to accomplish the connectivity could be detrimental to bull trout populations by providing access to competitor species such as lake trout, brook trout and rainbow trout. We are removing those reaches pending a site by site determination as to which are appropriate for barrier removal. If necessary, additional critical habitat can be designated once those determinations are made.

Public comments in general, and particularly technical comments from local, State, and Federal agencies and Native American Tribes, were very useful in focusing the proposal to those areas most essential to the conservation of the species. We held numerous public hearings and public meetings where we received specific technical comments that prompted further internal critical review of the proposal. The peer review process provided constructive criticism from fisheries scientists regarding our approach to developing the critical habitat proposal, as well as technical comments regarding specific proposed habitat areas. Through our working relationships with State and Federal agencies, we also received some new information after the proposal was issued, such as new records of bull trout occurrence, evidence of reproduction in some streams, or the lack of such positive survey results, as well as information on conservation actions underway within states.

We made revisions to the stream miles, and lake and reservoir acreages based on information supplied by commenters, as well as information gained from field visits to some of the sites, for areas not essential to bull trout conservation; unoccupied habitat was removed from the rule as the Secretary was unable to make a determination that

these unoccupied areas were essential to the conservation of the species. We have modified PCEs (1), (5), (7) and (9) to provide greater clarity. Our intent was not to change the essence of individual elements, but only to further refine the description of those physical and biological features that are essential to the conservation of the species.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. "Conservation'' is defined by the Act as the use of all methods and procedures which are necessary to bring any endangered or a threatened species to the point at which the measures provided pursuant to the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions authorized, funded, or carried out by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species.'' Critical habitat designations identify, to the extent known, and using the best scientific and commercial data available, habitat areas that are essential to the conservation of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Occupied habitat may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271) and our U.S. Fish and Wildlife Service Information Quality Guidelines (2002) provide criteria, establish procedures, and provide guidance to ensure that our decisions represent the best scientific and commercial data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. Information may be obtained from the listing document, a recovery plan, 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. The various data that we collect are weighted based on their verifiability, for example, anecdotal evidence and opinion have less weight than results from published studies or long-term or ongoing monitoring.

Critical habitat designations do not signal that habitat outside the designation is unimportant to bull trout. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1), to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action.

Methods

As required by section 4(b)(1)(A) of the Act, we used the best scientific and commercial data available to determine areas that are essential to the conservation of bull trout. In designating critical habitat, we reviewed the approaches to the conservation of the species undertaken by local, State, and Federal agencies; Tribal governments; and private individuals and organizations since the species was listed in 1998. We relied heavily on information developed by the bull trout Recovery Unit Teams, which were comprised of Federal, State, Tribal, and private biologists, as well as experts from other scientific disciplines such as hydrology and forestry, resource users, and other stakeholders with an interest in bull trout and the habitats they depend on for survival. We reviewed available information concerning bull trout habitat use and preferences, habitat conditions, threats, limiting factors, population demographics, and the known locations, distribution, and abundances of bull trout.

During our evaluation of information, we also took into account the relatively low probability of detection of bull trout in traditional fish sampling and survey efforts, as well as the limited extent of such efforts across the range of bull trout. Because of their varied life history strategies, nocturnal habits, and low population densities in many areas, the detectability of bull trout in a given area is highly variable (Rieman and McIntyre 1993). Furthermore, much of the current information on bull trout presence is the product of informal surveys or sampling conducted for other species or other purposes. The primary limitations of informal surveys are that they provide no estimate of certainty (i.e., a measure of the probability of detection), and that they may be inadequate for determining parameters such as the densities and distribution of the population. The need for a statistically sound bull trout survey protocol has been addressed only recently through the development, by the American Fisheries Society, of a peer-reviewed protocol for determining presence/absence, and potential habitat suitability for juvenile and resident bull trout (Peterson *et al.* 2002). Consequently, with some exceptions (*e.g.*, areas of Montana where bull trout surveys have been consistently conducted for a decade or more), a lack of bull trout detections does not provide definitive evidence of their absence in a particular stream, lake, or river.

We used information gathered during the bull trout recovery planning process, as supplemented by even more recent information developed by State agencies, Tribes, USFS, and other entities, in developing this final rule designating critical habitat. Data concerning habitat conditions or status of PCEs were used when available. To address areas where data gaps exist, we solicited expert opinions from knowledgeable fisheries biologists in the local area.

Important considerations in selecting areas for critical habitat designation include factors specific to each river system, such as size (*e.g.*, stream order), gradient, channel morphology, connectivity to other aquatic habitats, and habitat complexity and diversity, as

well as range-wide recovery considerations. This effort was assisted by the recovery strategy described in the draft Recovery Plan. We took into account that preferred habitat for bull trout ranges from small headwater streams used largely for spawning and rearing, to downstream, mainstem portions of river networks used for rearing, foraging, overwintering, and migration.

Our methods included consideration of information regarding habitat essential to maintaining the migratory life history forms of bull trout, in light of the repeated emphasis about the importance of such habitat in the scientific literature (Rieman and McIntryre 1993; Hard 1995; Healey and Prince 1995; Rieman *et al.* 1995; MBTSG 1998; Dunham and Rieman 1999; Nelson *et al.* 2002). Habitat for movement upstream and downstream is essential for all life history forms for spawning, foraging, growth, access to rearing and overwintering areas, or thermal refugia (*e.g.*, spring-fed streams in late summer), avoidance of extreme environmental conditions, and other normal behavior. Successful migration requires biologically, physically, and chemically unobstructed routes for movement of individuals. Therefore, our method included considering information regarding habitat that is essential for movement into and out of larger rivers, because of the importance of such areas to the fluvial form of bull trout. We similarly identified habitat that is essential for movement between streams and lakes by adfluvial forms.

Migratory corridors also are essential for movement between populations (Fraley and Shepard 1989; Rieman and McIntyre 1993, Rieman *et al.* 1995, Dunham and Rieman 1999). Thus, in addition to considering areas important for migration within populations, our method also included considering information regarding migration corridors necessary to allow for genetic exchange between local populations. Corridors that provide for such movements can support eventual recolonization of unoccupied areas or otherwise play a significant role in maintaining genetic diversity and metapopulation viability. See the proposed rule (November 29, 2002 (67 FR 71235) for details. Because these factors are important in identifying areas that are essential to the conservation of bull trout, our method included consideration of the various roles that migratory corridors have for bull trout.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat, we are required to base the designation on the best scientific data available, and to consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and that may require special management considerations or protection. These include, but are not limited to: Space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Although critical habitat is being designated across a wide area and involves 25 discrete units, the function of individual critical habitat units (and the core areas contained therein) appreciably contributes to the conservation value of all critical habitat from a genetic, demographic, and distributional perspective, as discussed below.

Central to the function of individual critical habitat units is the maintenance of core areas which: (1) Contain bull trout populations with the demographic characteristics needed to ensure their persistence and contain the habitat needed to sustain those characteristics (Rieman and McIntyre 1993); (2) provide for persistence of strong local populations, in part, by providing habitat conditions that encourage movement of migratory fish (Rieman and McIntyre 1993; MBTSG 1998); (3) are large enough to incorporate genetic and phenotypic diversity, but small enough to ensure connectivity between populations (Rieman and McIntyre 1993; Hard 1995; Healey and Prince 1995; MBTSG 1998); and (4) are distributed throughout the historic range of the species to preserve both genetic and phenotypic adaptations (Rieman and McIntryre 1993; Hard 1995; MBTSG 1998; Rieman and Allendorf 2001).

Maintenance or establishment of functional PCEs throughout all core areas is essential to the conservation of the bull trout because:

(1) Genetic diversity enhances long-term survival of a species by increasing the likelihood that the species is able to survive changing environmental conditions. If the overall genetic diversity distributed across the range of the bull trout is reduced by the loss of core areas containing multiple local populations, the ability of the species to survive changing conditions is likewise reduced, leading to a higher likelihood of extinction (Rieman and McIntyre 1993; Leary *et al.* 1993; Hard 1995; Spruell *et al.* 1999; Rieman and Allendorf 2001);

(2) Maintaining multiple bull trout core areas distributed and interconnected throughout their current range will provide a mechanism for spreading the risk of extinction from stochastic (*i.e.*, "random'') events (Rieman and McIntyre 1993; Hard 1995; Healey and Prince 1995; Spruell *et al.* 1999; Rieman and Allendorf 2001);

(3) Maintaining core areas with multiple local populations will address potential negative implications associated with low effective population levels (*i.e.*, inbreeding depression and a potential decrease in viability or reproductive fitness of a population (Franklin 1980) and loss of genetic variation due to genetic drift) (Franklin 1980; Soule 1980; Lande 1988); and,

(4) Core areas provide connectivity between areas of high quality habitat and contain important migration corridors for migratory bull trout; core areas contain habitat that facilitates movement between local populations or otherwise plays a significant role in maintaining metapopulation viability (*i.e.*, by providing sources of immigrants to recolonize adjacent habitat patches following periodic extirpation events) (Rieman and McIntyre 1993; Rieman *et al.* 1995; Dunham and Rieman 1999) and maintaining the migratory life-history form. The importance of maintaining the migratory life-history form of the bull trout, as well as the presence of migratory runs of other salmonids that may provide a forage base for bull trout, is repeatedly emphasized in the scientific literature (Rieman and McIntyre 1993; Hard 1995; Healey and Prince 1995; Rieman *et al.* 1995; MBTSG 1998; Dunham and Rieman 1999; Nelson *et al.* 2002).

All areas designated as critical habitat for bull trout are within the species' historic geographic range and contain enough of the PCEs identified as essential to its conservation in the area designated to enable the bull trout to carry out normal behavior. Much of what is known about the specific physical and biological requirements of bull trout are described in the proposed designation of critical habitat rule (November 29, 2002 (67 FR 71235)). PCEs include, but are not limited to: Space for individual and population growth, and for normal behavior; food,

water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance. The following are the PCEs for the bull trout:

(1) Water temperatures ranging from 36 to 59 °F (2 to 15 °C), with adequate thermal refugia available for temperatures at the upper end of this range. Specific temperatures within this range will vary depending on bull trout life history stage and form, geography, elevation, diurnal and seasonal variation, shade, such as that provided by riparian habitat, and local groundwater influence. Stream reaches that do not meet this temperature requirement are specifically excluded from designation;

(2) Complex stream channels with features such as woody debris, side channels, pools, and undercut banks to provide a variety of depths, velocities, and instream structures;

(3) Substrates of sufficient amount, size, and composition to ensure success of egg and embryo overwinter survival, fry emergence, and young-of-the-year and juvenile survival. This should include a minimal amount of fine substrate less than 0.25 inch (0.63 centimeter) in diameter.

(4) A natural hydrograph, including peak, high, low, and base flows within historic ranges or, if regulated, currently operate under a biological opinion that addresses bull trout, or a hydrograph that demonstrates the ability to support bull trout populations by minimizing daily and day-to-day fluctuations and minimizing departures from the natural cycle of flow levels corresponding with seasonal variation: This rule finds that reservoirs currently operating under a biological opinion that addresses bull trout provides management for PCEs as currently operated;

(5) Springs, seeps, groundwater sources, and subsurface water to contribute to water quality and quantity as a cold water source;

(6) Migratory corridors with minimal physical, biological, or water quality impediments between spawning, rearing, overwintering, and foraging habitats, including intermittent or seasonal barriers induced by high water temperatures or low flows;

(7) An abundant food base including terrestrial organisms of riparian origin, aquatic macroinvertebrates, and forage fish;

(8) Permanent water of sufficient quantity and quality such that normal reproduction, growth, and survival are not inhibited.

The bull trout critical habitat for the Klamath River and Columbia River populations are designed to incorporate what is essential for their conservation. An area need not include all nine of the PCEs to qualify for designation as critical habitat. However, enough of the PCEs must be present at the time of designation to allow use for normal activities by the fish, and the lack of any particular PCE cannot precluse use by the bull trout.

Criteria Used To Identify Critical Habitat

The draft Recovery Plan identifies the specific recovery needs of the species and provides guidance for identifying areas that warrant critical habitat designation. As described below, this draft Recovery Plan was used as the principal basis for identifying this critical habitat designation. We re-evaluated the proposed designation based on public comment, peer review of the proposed rule and the draft Recovery Plan, the economic analysis of the proposed rule, and the public comments on that analysis, and other available information, to ensure that the designation accurately reflects habitat that is essential to the conservation of the species.

The draft Recovery Plan provides important information and science that was used as the basis for developing the critical habitat designation for bull trout. It focuses primarily on the maintenance (and, where needed, expansion) of existing local populations by: (1) Protecting sufficient amounts of spawning and rearing habitat in upper watershed areas; (2) providing suitable habitat conditions in downstream rivers and lakes to provide foraging and overwintering habitat for fluvial and adfluvial fish; and (3) sustaining (and in some cases reestablishing) movement corridors to maintain migratory routes and the potential for gene flow between local populations by maintaining habitat conditions that allow for fish passage. However, it is important to note that the draft Recovery Plan, when completed, will not be a regulatory document. Many of the proposals and options for recovery are expansive in nature and anticipate voluntary participation by landowners and agencies. Accordingly, this rule will focus on those areas that are essential to the conservation of the species, using the common meaning of the term "essential,'' which is indispensable.

Critical habitat units are patterned after recovery units identified in the draft Recovery Plan for the Klamath River and Columbia River populations. Using the guidance from that plan, we identified habitat areas needed for the survival and recovery of bull trout. To be included as critical habitat, an area had to provide one or more of the following three functions: (1) Spawning, rearing, foraging, or overwintering habitat to support existing bull trout local populations; (2) movement corridors necessary for maintaining migratory life-history forms; and/or (3) suitable and historically occupied habitat that is essential for recovering existing local populations that have declined, or that is needed to reestablish local populations required for recovery.

The critical habitat designation removed areas not known to be occupied. These areas have been deleted from the final designation because we do not have survey information to confirm that they were historically occupied by bull trout, and we were unable to confirm that they were essential for bull trout conservation. Historically, bull trout survey information was often accumulated incidental to surveys for other, more highly valued, species such as salmon and steelhead. Because of different life history attributes, bull trout are not as detectable as salmon and steelhead when utilizing a single common survey protocol. Additionally, during surveys, bull trout have historically been lumped into a general category such as "other trout'' and not identified to species. These historical biases, combined with the fact that a survey protocol for juvenile bull trout and resident forms of bull trout was only developed and accredited in 2002, has resulted in a relative dearth of verified occupancy information for bull trout across much of its range. A commonly recognized and accepted survey protocol for adult, migratory bull trout has not yet been developed.

Restoration of reproducing bull trout populations to additional portions of their historical range would significantly reduce the likelihood of extinction due to natural or human-caused factors that might otherwise further reduce population size and distribution. Thus, an integral component of the draft Recovery Plan is the selective reestablishment of secure, self-sustaining populations in certain areas where the species has apparently, but not necessarily conclusively, been extirpated. In this regard, we also note that some habitat areas that would not be considered essential if they were geographically isolated are, in fact, essential to the conservation of the species when situated in locations where they facilitate movement between local populations, or otherwise play a significant role in maintaining

metapopulation viability (*e.g.*, by providing sources of immigrants to recolonize adjacent habitat patches following periodic extirpation events) (Dunham and Rieman 1999). In addition, populations on the periphery of the species' range, or in atypical environments, are important for maintaining the genetic diversity of the species and could prove essential to the ability of the species to adapt to rapidly changing climatic and environmental conditions (Leary *et al.* 1993; Hard 1995).

A brief discussion of each area designated as critical habitat is provided in the unit descriptions below. Additional detailed documentation concerning the essential nature of these areas is contained in our supporting record for this rulemaking.

Critical habitat for bull trout was delineated using multiple sources including: The StreamNet GIS (Geographic Information System) database for Idaho, Oregon, Washington, and Montana; and State databases of bull trout distribution.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be essential for conservation may require special management considerations or protections.

As we undertake the process of designating critical habitat for a species, we first evaluate lands defined by those physical and biological features essential to the conservation of the species for inclusion in the designation pursuant to section 3(5)(A) of the Act. Secondly, we then evaluate lands defined by those features to assess whether they may require special management considerations or protection. As discussed throughout in the proposed critical habitat rule for the Klamath and Columbia River bull trout populations (67 FR 71236, November 29, 2002), in the draft Recovery Plan for the Klamath, Columbia, and St. Mary-Belly River bull trout populations, and in the various proposed and final listing rules for bull trout (62 FR 32268, June 13, 1997; 64 FR 17110, April 8, 1999;63 FR 31647, June 10, 1998; 63 FR 31693, June 10, 1998; and 64 FR 58910, November 1, 1999), bull trout and its habitat are threatened by a multitude of factors. Threats to those features that define essential habitat (PCEs) are caused by negative changes in water quality, stream complexity, quality and quantity of stream substrate, stream hydrology, migratory corridors, food sources, and nonnative competitors and predators (Rieman and McIntyre 1996; MBTSG 1998). It is essential for the conservation of bull trout to protect those features that define the remaining essential habitat, through appropriate management, from irreversible threats and habitat conversion. These impacts can be ameliorated by educating landowners and managers about the location and value of these resources.

Within each area designated as critical habitat, the physical and biological features essential for the conservation of the bull trout may require some level of management and/or protection to avoid destruction or adverse modification of habitat essential to its conservation.

Relatively cold water temperatures are characteristic of bull trout habitat. Water temperatures above 59 °F (15 °C) are believed to limit their distribution (Fraley and Shepard 1989; Rieman and McIntyre 1996). Although adults have been observed in large rivers throughout the Columbia River basin in water temperatures up to 68 °F (20 °C), Gamett (1999) documented steady and substantial declines in abundance in stream reaches where water temperature ranged from 59 to 68 °F (15 to 20 °C). Thus, water temperature may partially explain the generally patchy distribution of bull trout in a watershed. In large rivers, bull trout are often observed "dipping'' into the lower reaches of tributary streams, and it is suspected that cooler waters in these tributary mouths may provide important thermal refugia, allowing them to forage, migrate, and overwinter in waters that would otherwise be, at least seasonally, too warm. Spawning areas often are associated with cold-water springs, groundwater infiltration, and the coldest streams in a given watershed (Pratt 1992; Rieman and McIntyre 1993; Rieman *et al.* 1997).

The stability of stream channels and stream flows are important habitat characteristics for bull trout populations (Rieman and McIntyre 1993). Altered stream flow in the fall may disrupt bull trout during the spawning period, and channel instability may decrease survival of eggs and young juveniles in the gravel during winter through spring (Fraley and Shepard 1989; Pratt 1992; Pratt and Huston 1993).

Throughout their lives, bull trout require complex forms of cover, including large woody debris, undercut banks, boulders, and pools (Fraley and Shepard 1989; Watson and Hillman 1997). Juveniles and adults frequently inhabit side channels, stream margins, and pools with suitable cover (Sexauer and James 1997). McPhail and Baxter (1996) reported that newly emerged fry are secretive and hide in gravel along stream edges, and in side channels. McPhail and Baxter (1996) also reported that juveniles are found mainly in pools, but also in riffles and runs, that they maintain focal sites near the bottom, and that they are strongly associated with instream cover, particularly overhead cover. Bull trout have been observed overwintering in deep beaver ponds or pools containing large woody debris (Jakober 1995). Activities that disrupt or reduce stream complexity such as channelizing, reducing the input of woody debris, or removing riparian cover may negatively affect bull trout (Rieman and McIntyre 1996; MBTSG 1998).

The ability to migrate is important to the persistence of local bull trout subpopulations (Rieman and McIntyre 1993; Gilpin 1997; Rieman and Clayton 1997; Rieman *et al.* 1997). Bull trout rely on migratory corridors to move from spawning and rearing habitats to foraging and overwintering habitats and back. Migratory bull trout become much larger than resident fish in the more productive waters of larger streams and lakes, leading to increased reproductive potential (McPhail and Baxter 1996). Also, local populations that have been extirpated by catastrophic events may become reestablished as a result of movements by bull trout through migratory corridors (Rieman and McIntyre 1993; MBTSG 1998). Activities that preclude the function of migratory corridors may affect bull trout (*e.g.*, stream blockages).

The introduction and spread of nonnative species, particularly brook trout and lake trout, which compete with bull trout for limited resources and, in the case of brook trout, hybridize with bull trout (Ratliff and Howell 1992; Leary *et al.* 1993) is another ongoing threat to bull trout. Both species have been introduced in historical bull trout habitat, and both legal and illegal introductions of these and other competing species have continued to the present.

Relationship to HCPs and Other Planning Efforts

Section 3(5)(A) of the Act defines critical habitat, in part, as those areas requiring special management considerations or protection. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. This permit allows a non-Federal landowner to proceed with an activity that is legal in all other respects, but that results in the incidental taking of a listed species. An incidental take permit application must be supported by an HCP that identifies conservation

measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. The purpose of the HCP is to describe and ensure that the effects of the permitted action on covered species are adequately minimized and mitigated, and that the action does not appreciably reduce the survival and recovery of the species.

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, 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. An area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species.

In our critical habitat designations, we use the provisions outlined in section 4(b)(2) of the Act to evaluate those specific areas that we consider designating as critical habitat. Lands we have excluded from designated critical habitat pursuant to section 4(b)(2), include those covered by the following types of plans if they provide assurances that the conservation measures they outline will be implemented and effective: (1) Legally operative approved HCPs that cover the species; (2) draft HCPs that cover the species and have undergone public review and comment (*i.e.*, pending HCPs) and that we are able to make a biological determination that when completed, the plan will provide adequate protection; (3) Tribal conservation plans that cover the species; (4) State conservation plans that cover the species; and (5) National Wildlife Refuge System Comprehensive Conservation Plans.

Lands Excluded From Critical Habitat

Habitat Conservation Plans

As described above, section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic and national security impacts, when designating critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue to non-Federal entities a permit for the incidental take of endangered and threatened species. This permit allows a non-Federal landowner to proceed with an activity that is legal in all other respects, but that results in the incidental taking of a listed species (*i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). The Act specifies that an application for an incidental take permit must be accompanied by a conservation plan, and specifies the content of such a plan. The purpose of such an HCP is to describe and ensure that the effects of the permitted action on covered species are adequately minimized and mitigated, and that the action does not appreciably reduce the survival and recovery of the species.

Within the area covered by the Klamath River population, there are no HCPs involving bull trout. Within the range of the Columbia River population, the approved Plum Creek Native Fish, Plum Creek I–90, Stimson Lumber Company, and WDNR HCPs have been developed, in part, to provide for bull trout conservation needs while also allowing for otherwise lawful timber management activities. The duration of the permits associated with the Plum Creek and WDNR HCPs ranges from 30 to 100 years. The permittees have the option, however, of terminating at any time if they so choose, with a 60-day notice to us. Moreover, the permittees may retain their permits but sell some of their lands covered by an HCP. All of these HCPs contain provisions that allow buyers of lands covered by the HCP to assume the permit if they so desire. That is the process by which the Stimson Lumber HCP was created, when the Stimson Lumber Company acquired certain lands previously owned by Plum Creek and assumed all of the Plum Creek HCP commitments.

The Plum Creek I–90 HCP includes provisions that: (1) Generally allow for the sale or exchange of lands with the USFS, with some specific limitations relative to implementation of the NWFP; (2) allow for the sale of any lands provided appropriate covenants or assurances are given by the acquiring party that such lands will be managed consistent with the goals and objectives of the HCP; and (3) allow for the sale of parcels not in excess of 640 ac (259 ha) to any private party as long as the cumulative total of all such transactions does not exceed 5 percent of the acreage covered by the permit, and the cumulative total of all such transactions in any one township does not exceed 1,920 ac (777 ha). The Plum Creek Native Fish HCP and Stimson Lumber HCP apply a proportionality ratio to land dispositions relative to three categories of dispositions: positive, neutral, and negative in terms of conservation benefits to covered species. Plum Creek and Stimson Lumber Company have committed to manage their land dispositions so that the cumulative total of dispositions stays within a predetermined range of proportionality. If, at the end of the HCP term, the proportionality balance is below the predetermined range limits, positive land disposition commitments must be applied to sufficient acreage within the project area to restore the balance.

The WDNR lands are maintained primarily for the purpose of growing and selling timber to finance State government, and the management of these lands also can include purchases, sales, and land exchanges. The WDNR HCP does not include incentives for placing conservation easements on some of the land that WDNR sells. The HCP allows WDNR to dispose of permit lands at its sole discretion. However, if the cumulative impact of disposed lands would have a significant adverse effect on the covered species, the parties to the HCP are required to mutually amend the HCP to provide replacement mitigation.

We evaluated lands covered by these existing HCPs to determine whether it (1) provides a conservation benefit to the species; (2) provides assurances that the management plan will be implemented; and (3) provides assurances the plan will be effective. Approved and permitted HCPs are designed to ensure the long-term survival of covered species within the plan area. Where we have an approved HCP, the areas we ordinarily would designate as critical habitat for the covered species will normally be protected through the terms of the HCPs and their implementation agreements (IAs). These HCPs and implementation agreements include management measures and protections that are crafted to protect, restore, and enhance their value as habitat for covered species.

The issuance of a permit (under section 10(a) of the Act) in association with an HCP application is subject to consultation under section 7(a)(2) of the Act. During consultation on permit issuance, we must address the issue of destruction or adverse modification of critical habitat for bull trout and any other species protected by the plan. Since these large regional HCPs address land use within the plan boundaries, habitat issues within the plan boundaries have been addressed in the HCP and the consultation on the permit associated with the HCP. This requires us to make a determination as to the effect on both survival and recovery of a listed species, in the case of critical habitat by reducing the function of the habitat so designated.

The Plum Creek I–90 and WDNR HCPs occur mostly in western Washington, with minimal overlap (*i.e.*,

lands adjacent to less than 50 mi (80 km) for each plan) with designated critical habitat for the Columbia River population. The Plum Creek Native Fish HCP and Stimson HCP cover approximately 1.6 million ac (647,500 ha), all within the range of the Columbia River population and mostly within western Montana. All lands lying within these HCPs are in the Clark Fork River (Unit 2), Kootenai River (Unit 3), or Clearwater River (Unit 15) CHU. Lands within these HCPs occur adjacent to less than approximately 500 mi (894 km) of stream reaches that we identified as critical habitat.

We have reviewed the four HCPs within the Columbia River population of bull trout and determined that the benefits of excluding them from the final designation of critical habitat for the bull trout outweigh the benefits of including them in the designation. Therefore, areas covered by these HCPs are excluded from this critical habitat designation pursuant to section 4(b)(2) of the Act. Our rationale for these exclusions is discussed below.

Montana DNRC is developing an HCP that will cover forest management activities on approximately 700,000 ac (283,281 ha) of forested blocked and scattered trust lands across the State of Montana. The HCP may include an additional 300,000 ac (121,406 ha) of nonforested parcels associated with access for timber management activities on forested lands. The predominant emphasis of the HCP will be on trust lands in western Montana. DNRC is considering an agreement term of 50 years. The covered activities will include activities common to commercial forest management.

An aquatic work group, whose members include DNRC and Service project managers, DNRC resource specialists, consulting resource specialists, and Service biologists, is meeting several times each month in order to collaboratively design conservation strategy recommendations, which will eventually be integrated into a comprehensive habitat-based conservation strategy for DNRC covered lands. The aquatic working group is developing a strategy that is designed to collectively meet the conservation needs for bull trout, westslope cutthroat trout (*Oncorhynchus clarki lewisi*), and redband trout (*Oncorhynchus mykiss gairdneri*).

The transitional lands working group is developing strategies for those forest lands where the primary use may be transferred from the forest management bureau to another DNRC Trust Lands Management bureau (*e.g.*, real estate, agriculture and grazing, or minerals) within the 50-year term of this HCP. Initially, DNRC is planning to develop a point-based accounting system for transitional lands, similar to the approach implemented in the Plum Creek Native Fish HCP. Once the individual technical work groups complete conservation strategy recommendations, the strategies will be integrated into habitat-based commitments that collectively meet the needs for all of the covered species. DNRC will use these commitments to develop an application for an incidental take permit, and the project will focus on producing a combined draft HCP and draft EIS. Under the existing timeline, these documents are scheduled for public distribution in September 2005.

It is our judgment that the collective benefits of the Montana DNRC HCP, including furthering the working relationship with the State of Montana, and providing additional protections to bull trout and their habitat, as well as a host of other nonlisted species, will be sufficient to exempt forested State lands of western Montana from bull trout critical habitat. The benefit of excluding those lands exceeds the benefit of including them as they will provide protection for any lands affecting bull trout conservation whether there is a Federal nexus or not. Thus the protections afforded the bull trout are increased beyond what a critical habitat designation could do. In total, approximately 144 mi (232 km) of stream segments in the Clark Fork River and Kootenai River CHUs are thus being excluded from what was proposed as critical habitat. The State of Montana has committed to the terms of the aquatic strategy that will be met on forested State lands, and is judged sufficient to meet the standard for exclusion of these lands. Forested Montana DNRC lands are included in the critical habitat maps, but are excluded, in a fashion similar to what was done for other HCP lands.

As noted above, lands within these HCPs are subject to change (*e.g.*, through sale or exchange), subject to various sideboards included in each HCP. Designated critical habitat does not include non-Federal lands covered by an incidental take permit for bull trout issued under section 10(a)(1)(B) of the Act for these HCPs as long as such permit, or a conservation easement providing comparable conservation benefits, remains legally operative on such lands. The following represents our rationale for excluding the critical habitat within approved HCPs.

(1) Benefits of Inclusion

The principal effect of designated critical habitat is that federally funded or authorized activities may require consultation under section 7 of the Act. Consultation ensures that action entities avoid adverse modification of critical habitat. Currently approved and permitted HCPs promote the long-term survival of addressed species. In an approved HCP, lands defined as critical habitat for covered species will be protected in reserves and other conservation lands by the terms of the HCP and its IA. HCPs and IAs include management measures and protections for conservation lands designed to protect, restore, and enhance their value as habitat for covered species, and thus provide benefits to the species well in excess of those that would result from a critical habitat designation. Where HCPs are in place, our experience indicates that the benefit of designated critical habitat is small or non-existent.

Another possible benefit to including these lands is that the designation of critical habitat can serve to educate landowners and the public regarding the potential conservation value of an area. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. However, through the HCP development process, which typically involves extensive outreach and opportunity for public review and typically results in formal protection of essential habitat areas, the public is well informed and educated about conservation value of essential habitat lands.

(2) Benefits of Exclusion

The benefits of excluding lands within HCPs from critical habitat designation include carrying out the assurances provided by the Service to landowners, communities, and counties in return for their voluntary adoption of the HCP, including relieving them of the additional regulatory burden that might be imposed by critical habitat. Many HCPs, which can take years to develop, and upon completion, become the basis for regional conservation plans that are consistent with the recovery objectives for listed species covered within the plan area. Many of these HCPs provide conservation benefits to unlisted, rare species. Imposing additional regulatory review after an HCP is completed solely as a result of the designation of critical habitat may undermine conservation efforts and partnerships in many areas. In fact, it could result in the loss of species' benefits if participants abandon the voluntary HCP process because it

may result in an additional regulatory burden requiring more of them than of other parties who have not voluntarily participated in species conservation. Designation of critical habitat within the boundaries of approved HCPs is likely to be viewed as a disincentive to those entities currently developing HCPs or contemplating them in the future. Excluding HCPs provides us with an opportunity to streamline regulatory compliance and confirm regulatory assurances for HCP participants.

A related benefit of excluding lands within HCPs from critical habitat designation is the continued ability by us to seek new partnerships. These may include future HCP participants, such as States, counties, local jurisdictions, conservation organizations, and private landowners. These entities together may implement conservation actions that we would be unable to accomplish otherwise. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships and, we believe, set the stage for more effective conservation actions in the future.

An HCP application must undergo section 7 consultation. While this consultation does not address adverse modification to critical habitat, it will determine if the HCP jeopardizes the species in the plan area. Federal actions not covered by the HCP, but in areas occupied by listed species, still require consultation under section 7 of the Act. HCPs typically provide greater conservation benefits to an addressed listed species than section 7 consultations because HCPs assure the long-term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5 Point Policy for HCPs (64 FR 35242) and the HCP "No Surprises'' regulation (63 FR 8859). Such assurances are typically not provided by ordinary, non-programmatic section 7 consultations which are limited to requiring that the specific action being consulted upon not jeopardize the continued existence of the species.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

The educational benefits of critical habitat, including informing the public of areas that are essential for the long-term survival and conservation of the species, is still accomplished from material provided on our website and through public notice and comment procedures required to establish an HCP. We have also received input from the public through the public participation that occurs in the development of many regional HCPs. For these reasons, we believe that designating critical habitat has little additional benefit in areas covered by HCPs, provided that the HCP specifically and adequately covers the species for which critical habitat has been designated. We do not believe that this exclusion would result in the extinction of the species because the essential habitat within these HCPs will ostensibly be conserved.

The development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species recovery, and the creation of innovative solutions to conserve species while allowing for commercial activity. The educational benefits of critical habitat, including informing the public of areas that are important for the long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many regional HCPs. For these reasons, then, we believe that designation of critical habitat normally has little benefit in areas covered by HCPs.

The benefits of excluding lands covered by these HCPs would be significant in preserving positive relationships with our conservation partners, lessening potential additional regulatory review and potential economic burdens, reinforcing the regulatory assurances provided for in IAs for approved HCPs, and providing for more established and cooperative partnerships for future conservation efforts. In summary, excluding lands covered by HCPs in critical habitat designations outweigh the benefits of including lands covered by HCPs. Furthermore, we have determined in section 7 consultations on approved HCPs that they would not jeopardize the continued existence of the bull trout. Consequently, excluding these lands from the critical habitat designation will not result in the extinction of the species. Therefore, these lands have not been designated as critical habitat for the bull trout.

Washington State Forest Practices Rules and Regulations, as Amended by the Forest and Fish Law (FFR)

An effort (known as the FFR) to address the needs of listed salmonids, and avoid conflicts between State regulations and the Act, was adopted by the Washington state legislature, thereby amending the Revised Code of Washington with respect to the Washington Forest Practices Act (RCW 76.09), as well as the Washington Administrative Code with respect to the Washington Forest Practices Rules (WAC 222).

The FFR addressed the needs of salmonids, other fish, and stream-associated amphibians, and specifically addressed the needs of bull trout and its habitat. Riparian buffers on fishbearing streams were designed to recruit the majority of the large wood which potentially could be recruited from these riparian areas. Because addressing the recruitment of large wood requires buffer widths greater than that needed to address many other riparian functions, these buffers also address the riparian functions of bank stability, shade, nutrient input, and sediment filtering. Riparian buffers on fishbearing streams likely account for half of the wood delivered to such streams. The remainder of large wood in these streams depends on episodic and catastrophic events for transport from upstream and upslope areas. These "upstream'' wood-recruitment mechanisms are not well understood. Riparian buffers for streams above fishbearing streams include a buffer at the confluence with fishbearing streams to address temperature concerns as well as provide a run-out zone for events such as landslides and channelized debris flows. Above those areas, buffers under FFR rules need not be continuous, but are designed to maintain stream temperatures within normal parameters and will be placed along sensitive reaches and sites. The FFR rules includes a strategy (the bull trout temperature overlay) for maintaining cooler water temperatures in streams located in the hotter, dryer portions of Washington, east of the Cascade Crest. Slope stability and the ability to harvest timber and construct roads on "at-risk'' or unstable slopes are also addressed through these rules.

Road construction and maintenance is a large part of these regulations, requiring corrective measures to address existing problem areas. These rules are designed to ensure stream connectivity through road crossings, shunting of road-generated sediment away from aquatic resources, and integrity of road infrastructure. It mandates a process of identification of problem areas and correction of those road segments within specified timeframes.

We assessed FFR with respect to bull trout PCEs. Forest practices conducted consistent with the FFR should not result in contaminated waters that inhibit reproduction, growth, or survival; instead, they are expected to

maintain a high-level of water quality. They are expected to maintain the thermal regime of streams within the range of normal variation, and contribute to the maintenance of complex stream channels, appropriate substrates, a natural hydrograph, ground-water sources and subsurface connectivity, migratory corridors, and an abundant food base. Forest practices are not expected to introduce or favor nonnative competitors or predators.

These rules apply to most non-industrial forest landowners, family-held and publicly-held industrial timber corporations, and some State lands. State lands managed by the WDNR west of the Cascade Crest are not subject to FFR as they are managed under their 1997 HCP with respect to bull trout. However, some provisions of FFR, such as road management and slope stability will be voluntarily applied by WDNR on those west-side lands. These rules do apply to WDNR lands east of the Cascade Crest and non-HCP private lands statewide, regardless of the presence of bull trout or salmon. Therefore, FFR includes benefits for many species in areas with no listed species. The FFR rules continue to apply so long as harvested land will be replanted and remain in forestry. Individual counties generally administer timber harvests associated with conversion of forested lands to agriculture or development, and all counties are expected to administer conversion harvests consistent with FFR by the year 2005.

These State Forest Practices Rules allow for the development of alternate plans. It is anticipated that non-industrial forest landowners will seek alternate plans for several inter-related reasons: (1) Much of the non-industrial lands are located at lower elevations where a disproportionate amount of the streams contain fish; (2) streams are lower gradient and can be addressed with different buffering scenarios that provide equal or better protection while allowing additional management flexibility; and (3) many non-industrial forest landowners do not have additional lands in their portfolio which can be used to offset the economic effect to them from reserve areas covering high percentages of their ownerships. All alternate plans, whether developed in conjunction with an HCP or not, will be evaluated for the level of protection provided to the aquatic resources including bull trout. It is expected that alternate plans will be required to provide equal or better protection for these resources. If this can be accomplished on some lands and waters in a more economical fashion, we expect landowners will attempt to avail themselves of these options, so long as the process for developing alternate plans is not overly onerous.

We assessed the adequacy of FFR as a special management plan to ensure that it provided: (1) A benefit to bull trout; (2) assurances of implementation; and (3) assurances it would be effective. For the reasons discussed above, bull trout will benefit from the implementation of FFR. FFR has already been adopted by the legislature and has been implemented for several years. Forest practice rules are monitored by the WDNR to ensure compliance by landowners and operators. Effectiveness is ensured through a cooperative adaptive-management process that includes collection of basic information regarding the covered species and their habitats, research, effectiveness monitoring, and regulatory feedback.

For these reasons, we believe that FFR, as a special management plan, provides substantial protection and restoration for bull trout and bull trout habitat. Therefore, we have determined that the benefits of excluding lands covered by FFR from the final designation of critical habitat for the bull trout outweighs the benefits of including them in the designation. Therefore, areas covered by the FFR are excluded from this critical habitat designation pursuant to section 4(b)(2) of the Act. Our rationale for these exclusions is discussed below.

(1) Benefits of Inclusion

Consultation. One benefit would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed actions do not destroy or adversely modify critical habitat. The economic analysis estimates that there have been over 200 formal consultations and thousands of informal consultations involving bull trout since its listing in 1998, and has involved numerous Federal action agencies. However, unless there are other types of Federal permitting or authorization within this area, private, and State-owned lands would not be affected.

Much of the land covered by FFR is zoned by the respective counties in a designation that holds long-term forestry as the primary objective. In areas zoned for other purposes, a higher rate of conversion from forestry to other land uses can be expected. FFR addresses forest practices and does not address conversion from forestry to other uses. Within the FFR area, conversion to some of these other land uses (*e.g.*, development) may trigger consultation (*e.g.*, filling of a wetland would require a permit from the Corps). However, most of these lands could be converted from forestry to other land uses without triggering consultation under section 7 of the Act, thus denying us any ability to assess and avoid any effect on critical habitat.

Non-industrial forest landowners have a high reliance on technical assistance provided through State and Federal programs, and occasionally participate in cost-share programs. These actions may trigger consultations, but would generally be for projects with little to no effect on bull trout, such as pre-commercial thinning, pruning, or planting. We expect a low level of Federal activity on these lands that would adversely affect bull trout or its habitat on these lands. Therefore, we anticipate little additional regulatory benefits from including these areas in critical habitat beyond what is already provided by the existing section 7 nexus for habitat areas occupied by bull trout and other listed extant aquatic species.

Bull trout belong to the same guild of fish and require similar habitat features as salmon. Salmon also need cold, clean, well-oxygenated water; substrates with minimal amounts of fine sediment for spawning; complex in-stream habitat features; and connectivity. Both bull trout and salmon are highly reliant on the ability to migrate between components of their habitat. Therefore, actions that benefit salmon frequently also provide benefits to bull trout, and actions that impact bull trout frequently also impact salmon. Minimization and mitigation measures for these species are also generally similar, and the features of essential habitat for salmon are compatible with the PCEs of bull trout critical habitat. Salmon not only overlap bull trout in habitat requirements, but also fill some of the current gaps in historic bull trout range. Thus, we find that little additional benefit through section 7 consultations would occur as a result of the overlap between habitat suitable for salmon and essential habitat for bull trout.

The economic analysis recognizes that while consultations regarding these areas will occur without bull trout critical habitat designation, those consultations may or may not consider the bull trout. In areas where removal or rectification of manmade, fish-passage obstructions are reasonably certain to occur, or where unoccupied range is currently accessible to expansion of the species, a "may affect'' determination may be made in unoccupied areas for projects which will not result in take of the bull trout. In other areas where occupancy is not documented despite surveys and where it is not likely in the

foreseeable future, consultations for bull trout likely would not occur. Because of the similar life-history requirements of bull trout and salmon, we do not anticipate that the outcomes of such consultations would be altered by the designation of critical habitat for bull trout.

Regulatory and protective conservation measures are already anticipated from the future consultations regarding the activities described above. Consequently, we do not believe that designating critical habitat within these areas would provide significant additional regulatory benefits for bull trout.

Education/Information

In *Sierra Club* v. *Fish and Wildlife Service,* 245 F.3d 434 (5th Cir. 2001), the Fifth Circuit Court of Appeals stated that the identification of habitat essential to the conservation of the species can provide informational benefits to the public, State and local governments, scientific organizations, and Federal agencies. The court also noted that heightened public awareness of the plight of listed species and their habitats may facilitate conservation efforts. We agree with these findings; however, we believe that there would be little additional informational benefit gained from including these areas within designated critical habitat for bull trout because the final rule identifies all areas that are essential to the conservation of bull trout, regardless of whether all of these areas are included in the regulatory designation.

Additionally, many partners at the Federal, State, local jurisdiction, private, and Tribal level have initiated active information programs. While this educational outcome is important for the conservation of bull trout, it is already being achieved through the existing management, education, and public outreach efforts carried out by landowners, conservation partners, and agencies. The plight of salmonids in the Pacific Northwest has been subject to a well-developed public outreach infrastructure that includes magazines, newsletters, well-publicized public events, annual festivals, school group activities, web-sites, and water-shed planning efforts. Consequently, few additional educational or informational benefits will be provided to bull trout if these areas are designated as critical habitat.

Voluntary Partnerships for Conservation and Restoration

Current and ongoing conservation activities for salmon are compatible with those for bull trout such that reestablishment of bull trout in historic range and recovery throughout its range should not be precluded in the future. Existing conservation efforts include the application of Federal and State funds to salmonid recovery through the Salmon Recovery Funding Board. Other programs are also focusing on both active and passive restoration of habitats. Many partners are cooperating to conducting monitoring and research. The Cooperative Evaluation, Monitoring, and Research program of FFR, is funding and supporting a variety of research regarding habitat needs of bull trout and salmon, as well as research regarding topics such as survey protocols and their efficiencies. The conservation activities conducted by us, other Federal Agencies, State Agencies, private organizations, and private individuals demonstrate that the public is already aware of the importance of riparian and upland management in the conservation of salmonids. Designation of critical habitat would merely affirm what is already widely accepted by conservationists, agencies, and most of the public regarding the conservation value of these areas. It would also likely provide a relatively low level of additional voluntary conservation effort, and is actually more likely to undermine many of the existing cooperative voluntary efforts.

(2) Benefits of Exclusion

Excluding lands defined by the FFR area from designated critical habitat will provide several benefits, as follows: (1) Exclusion of the lands from the final designation will maintain and enhance our ability to continue working with the FFR participants in a spirit of cooperation and partnership; and (2) other jurisdictions, private landowners, and other entities will likely continue to see the benefit of working cooperatively with us and will be provided with incentives to develop HCPs and other agreements which can provide the basis for future opportunities to conserve species and their habitats. A more detailed discussion concerning our rationale for the benefits of excluding HCPs from critical habitat is outlined in the previous discussion concerning the exclusion of approved HCPs.

Through the stakeholder-based FFR planning process, we have built trust among diverse and competing interests by encouraging open dialogue regarding aquatic and riparian management issues. The introduction of additional Federal influence, through the designation of critical habitat, could impact the trust and spirit of cooperation that has been established over the last several years. The designation of critical habitat would be expected to adversely affect our working relationship with the State of Washington and private landowners, and Federal regulation through designation of critical habitat would be viewed as an unwarranted and unwanted intrusion. Therefore, exclusion would avoid this impact to cooperative efforts and will reduce the cost and logistical burden of unnecessary regulatory oversight.

FFR will undergo section 7 consultation to ensure that acceptance of FFR as an HCP will not jeopardize bull trout or any other listed or covered species. Federal actions in occupied portions of the FFR area will still require consultation under section 7 of the Act. These benefits will continue to occur if these areas are excluded. But additionally, FFR and exclusion of the FFR areas, will set the stage for more effective conservation in the future, as well as provide substantial benefits in the immediate future.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and in accordance with section 4(b)(2) of the Act, we have analyzed the benefits of including FFR areas as part of the critical habitat designation and the benefits of excluding these areas, and determined that the benefits of exclusion outweigh those of inclusion. Further, we have determined that the exclusion of areas covered by the FFR would not result in the extinction of the bull trout based on the benefits provided the species through the plan.

The analysis conducted evaluating the benefits of excluding HCPs from critical habitat versus the benefits of including HCPs, as previously discussed for the exclusion of approved HCPs, and is applicable and appropriate for the exclusion of the FFR from designated critical habitat. However, we have specifically assessed the exclusion and inclusion of FFR areas in this respect.

Northwest Forest Plan

The Northwest Forest Plan was developed to manage the Northwest Forest in a manner that conserves the ecosystem and provides species the necessary elements they require to exist. Bull trout was one of the species considered in the Northwest Forest plan. There is general agreement that this is a comprehensive plan designed to improve habitat for all the species dependent on the Northwest Forest. In a 2002 report the Government Accounting Office found that the process used to develop and implement the Northwest Forest Plan addressed

many longstanding deficiencies that have contributed to unmet objectives in other land management plans.

(1) Benefits of Inclusion

The principal benefit of the inclusion of lands into designated critical habitat is that federally funded or authorized activities may require consultation under section 7 of the Act. Consultation ensures that action entities avoid adverse modification of critical habitat. Currently the Northwest Forest Plan promotes the conservation of addressed species, including the bull trout.

(2) Benefits of Exclusion

Consultation. One benefit would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed actions do not destroy or adversely modify critical habitat. The economic analysis estimates that there have been over 200 formal consultations and thousands of informal consultations involving bull trout since its listing in 1998, and has involved numerous Federal action agencies. However, unless there are other types of Federal permitting or authorization within this area, private, and State-owned lands would not be affected.

Regulatory and protective conservation measures are already anticipated from the future consultations regarding the activities described above. Consequently, we do not believe that designating critical habitat within these areas would provide significant additional regulatory benefits for bull trout.

Education/Information. In *Sierra Club* v. *Fish and Wildlife Service,* 245 F.3d 434 (5th Cir. 2001), the Fifth Circuit Court of Appeals stated that the identification of habitat essential to the conservation of the species can provide informational benefits to the public, State and local governments, scientific organizations, and Federal agencies. The court also noted that heightened public awareness of the plight of listed species and their habitats may facilitate conservation efforts. We agree with these findings; however, we believe that there would be little additional informational benefit gained from including these areas within designated critical habitat for bull trout because the final rule identifies all areas that are essential to the conservation of bull trout, regardless of whether all of these areas are included in the regulatory designation.

Additionally, many partners at the Federal, State, local jurisdiction, private, and Tribal level have initiated active information programs. While this educational outcome is important for the conservation of bull trout, it is already being achieved through the existing management, education, and public outreach efforts carried out by landowners, conservation partners, and agencies. The plight of salmonids in the Pacific Northwest has been subject to a well-developed public outreach infrastructure that includes magazines, newsletters, well-publicized public events, annual festivals, school group activities, web-sites, and water-shed planning efforts. Consequently, few additional educational or informational benefits will be provided to bull trout if these areas are designated as critical habitat.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

For these reasons, we believe that Northwest Forest Plan, as a special management plan, provides substantial protection and restoration for bull trout and bull trout habitat. Therefore, we have determined that the benefits of excluding lands covered by Northwest Forest Plan from the final designation of critical habitat for the bull trout outweighs the benefits of including them in the designation. Therefore, areas covered by the Northwest Forest Plan are excluded from this critical habitat designation pursuant to section 4(b)(2) of the Act. Our rationale for these exclusions is discussed below.

Based on the above considerations, and in accordance with section 4(b)(2) of the Act, we have analyzed the benefits of including Northwest Forest Plan areas as part of the critical habitat designation and the benefits of excluding these areas, and determined that the benefits of exclusion outweigh those of inclusion. Therefore, we have excluded all Federal lands covered under Northwest Forest Plan from this final designation of critical habitat for the bull trout pursuant to section 4(b)(2) of the Act. Further, we have determined that the exclusion of all Federal lands covered by the Northwest Forest Plan would not result in the extinction of the bull trout based on the benefits provided the species through the plan and our consultation on the Forest Plan under section 7 of the Act.

Federal Columbia River Power System (FCRPS)

The FCRPS is currently governed by two federal statues that protect the bull trout, the Act and the Northwest Electric Power Planning and Conservation Act. The Northwest Electric Power Planning and Conservation Act require the mitigation of hydropower impacts. The Act protects the bull trout from actions that would jeopardize its continued existence, and all agencies must consult and collaborate with Tribes to ensure their actions do not impact tribal rights. These various directives have resulted in a multiplicity of collaborative efforts in the basin; all directed at restoring habitat and species populations. Each affected state also has varying regulatory authority with respect to habitat protection. Finally, there are 11 Federal agencies involved specifically in salmon and steelhead recovery in the basin. In 2002 the GAO estimated $3.3 billion had been spent since 1982 to recover those species in the basin. Many of these activities such as fish passage through dams, stream flow and temperature alteration, and sediment reduction, are the same that would be required for bull trout recovery. This was also noted in the economic analysis for the designation. It is clear that the basin is not in need of special management and protection, there are myriad programs currently performing that function outside of the Act. In addition, the benefit of imposing an additional regulatory structure (in this case, a designation of bull trout critical habitat) with its attendant rigidities, was not as great as excluding this area from designation to allow the existing processes to identify and implement the most effective way to conserve all the species in the basin.

For these reasons, we believe that FCRPS provides substantial protection and restoration for bull trout and bull trout habitat. Therefore, we have determined that the benefits of excluding lands covered by FCRPS from the final designation of critical habitat for the bull trout outweighs the benefits of including them in the designation. Therefore, areas covered by the FCRPS are excluded from this critical habitat designation pursuant to section 4(b)(2) of the Act. Our rationale for these exclusions is discussed below.

(1) Benefits of Inclusion

The principal effect of designated critical habitat is that federally funded or authorized activities may require consultation under section 7 of the Act. Consultation ensures that action entities avoid adverse modification of critical habitat. Currently FCRPS promote the conservation of the bull trout.

(2) Benefits of Exclusion

Consultation. One benefit would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed actions do not destroy or adversely modify critical habitat. The economic analysis estimates that there

have been over 200 formal consultations and thousands of informal consultations involving bull trout since its listing in 1998, and has involved numerous Federal action agencies. However, unless there are other types of Federal permitting or authorization within this area, private, and State-owned lands would not be affected.

Education/Information. In *Sierra Club* v. *Fish and Wildlife Service,* 245 F.3d 434 (5th Cir. 2001), the Fifth Circuit Court of Appeals stated that the identification of habitat essential to the conservation of the species can provide informational benefits to the public, State and local governments, scientific organizations, and Federal agencies. The court also noted that heightened public awareness of the plight of listed species and their habitats may facilitate conservation efforts. We agree with these findings; however, we believe that there would be little additional informational benefit gained from including these areas within designated critical habitat for bull trout because the final rule identifies all areas that are essential to the conservation of bull trout, regardless of whether all of these areas are included in the regulatory designation.

Additionally, many partners at the Federal, State, local jurisdiction, private, and Tribal level have initiated active information programs. While this educational outcome is important for the conservation of bull trout, it is already being achieved through the existing management, education, and public outreach efforts carried out by landowners, conservation partners, and agencies. The plight of salmonids in the Pacific Northwest has been subject to a well-developed public outreach infrastructure that includes magazines, newsletters, well-publicized public events, annual festivals, school group activities, web-sites, and water-shed planning efforts. Consequently, few additional educational or informational benefits will be provided to bull trout if these areas are designated as critical habitat.

Voluntary Partnerships for Conservation and Restoration. Current and ongoing conservation activities for salmon are compatible with those for bull trout such that reestablishment of bull trout in historic range and recovery throughout its range should not be precluded in the future. Existing conservation efforts include the application of Federal and State funds to salmonid recovery through the Salmon Recovery Funding Board. Other programs are also focusing on both active and passive restoration of habitats. Many partners are cooperating to conducting monitoring and research. The conservation activities conducted by us, other Federal Agencies, State Agencies, private organizations, and private individuals demonstrate that the public is already aware of the importance of riparian and upland management in the conservation of salmonids. Designation of critical habitat would merely affirm what is already widely accepted by conservationists, agencies, and most of the public regarding the conservation value of these areas. It would also likely provide a relatively low level of additional voluntary conservation effort, and is actually more likely to undermine many of the existing cooperative voluntary efforts.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and in accordance with section 4(b)(2) of the Act, we have analyzed the benefits of including FCRPS areas as part of the critical habitat designation and the benefits of excluding these areas, and determined that the benefits of exclusion outweigh those of inclusion. Therefore, we have excluded all Federal lands covered under FCRPS from this final designation of critical habitat for the bull trout pursuant to section 4(b)(2) of the Act. Further, we have determined that the exclusion of areas covered by the FCRPS would not result in the extinction of the bull trout based on the benefits provided the species through the plan and our consultation on the FCRPS under section 7 of the Act.

Snake River Basin Adjudication, Montana Bull Trout Restoration Plan, Willamette and Malheur River Basins, and Streams Regulated Under PACFISH/INFISH

These exclusions include the Snake River Basin Adjudication, Montana Bull Trout Restoration Plan, the Willamette and Malheur River Basins, and stream reaches regulated under PACFISH/INFISH. The Snake River Basin Adjudication is an historic agreement between the Secretary of the Interior, the State of Idaho, and the Tribes to provide for conservation within the Snake River Basin. The affected parties have signed an agreement in principle and are moving forward to implement a plan for the basin. The benefit of excluding these areas from designation are that voluntary conservation will be achieved on all lands, not just lands with a Federal nexus. Stream reaches in the State of Montana Lands were excluded under section 4(b)(2) and because they do not meet the definition of critical habitat as they are not in need of special management or protection. The Willamette and Malheur Basins were excluded on the basis that the designations were the two most costly per river mile.

In January, 1994, the Governor of Montana established a Bull Trout Restoration Team to develop a restoration plan for bull trout in Montana. The Restoration Team created a Scientific Group to provide guidance on technical issues related to bull trout restoration efforts. The Montana Bull Trout Scientific Group conducted a status review of bull trout, assessed risks to the survival of the species, and identified restoration and conservation goals. Status reports were prepared for the twelve major bull trout restoration/conservation areas identified in Montana addressing the critical populations of bull trout within those areas. In addition, the Scientific Group prepared reports on three of the major issues relative to bull trout restoration—habitat requirements and land use impacts, removal and suppression of introduced species, and the use of transplants or stocking in restoration.

These documents, prepared by the Scientific Group in the time period between 1995 and 1998, were intended to provide the most current and accurate information available to the Montana Bull Trout Restoration Team. The intent was for watershed groups and other entities to utilize the information in making informed decisions affecting the restoration and conservation of bull trout in Montana. While implementation has not been uniform or consistent across the range of bull trout in Montana, there have been significant instances where the information developed by the Scientific Group has been applied (e.g., Plum Creek Native Fish HCP). Additionally, the FWS draft Bull Trout Recovery Plan utilized much of the information and incorporated many of the restoration and conservation goals identified by the Montana Bull Trout Scientific Group. The efforts of the Montana Bull Trout Restoration Team, as updated by more recent information on the status of and threats to bull trout in Montana, provides guidance to future restoration efforts that may be implemented to recover bull trout in Montana.

Lands currently managed under PACFISH/INFISH were excluded under section 4(b)(2) and because they do not meet the definition of critical habitat as they are not in need of special management or protection. PACFISH/INFISH was originally an interim measure pending completion of a plan similar to the Northwest Forest Plan in

the Interior Columbia River Basin. The Interior Columbia Plan was never completed; however, these management guidelines have been implemented by the U.S. Forest Service and the Bureau of Land Management for the past nine years. Where new management plans have been adopted by the land management agencies, the Service has found that the plans provided similar or improved outcomes. The existing management regime is protective of bull trout habitat, is likely to continue to the foreseeable future and no additional benefit would be realized by imposing a second regulatory scheme in the form of a critical habitat designation. The benefit of excluding the designations which is in terms of transactions costs to the agencies exceeds the benefit of designating critical habitat which will provide no additional protection in the face of the existing management.

For these reasons, we believe that Snake River Basin Adjudication, stream reaches in the State of Montana, the Willamette and Malheur River Basins, and stream reaches regulated under PACFISH/INFISH provides substantial protection and restoration for bull trout and bull trout habitat. Therefore, we have determined that the benefits of excluding lands covered by these plans from the final designation of critical habitat for the bull trout outweighs the benefits of including them in the designation. Consequently, areas covered by the Snake River Basin Adjudication, stream reaches in the State of Montana, the Willamette and Malheur River Basins, stream reaches regulated under PACFISH/INFISH are excluded from this critical habitat designation pursuant to section 4(b)(2) of the Act. Our rationale for these exclusions is discussed below.

(1) Benefits of Inclusion

The principal benefit of any designated critical habitat is the requirement for consultation under section 7 of the Act for any activities having a Federal nexus that may adversely affect critical habitat. Consultation ensures that action entities avoid the destruction or adverse modification of critical habitat.

(2) Benefits of Exclusion

Consultation. One benefit would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed actions do not destroy or adversely modify critical habitat. The economic analysis estimates that there have been over 200 formal consultations and thousands of informal consultations involving bull trout since its listing in 1998, and has involved numerous Federal action agencies. However, unless there are other types of Federal permitting or authorization within this area, private, and State-owned lands would not be affected.

Regulatory and protective conservation measures are already anticipated from the future consultations regarding the activities described above. Consequently, we do not believe that designating critical habitat within these areas would provide significant additional regulatory benefits for bull trout.

Education/Information. In *Sierra Club* v. *Fish and Wildlife Service*, 245 F.3d 434 (5th Cir. 2001), the Fifth Circuit Court of Appeals stated that the identification of habitat essential to the conservation of the species can provide informational benefits to the public, State and local governments, scientific organizations, and Federal agencies. The court also noted that heightened public awareness of the plight of listed species and their habitats may facilitate conservation efforts. We agree with these findings; however, we believe that there would be little additional informational benefit gained from including these areas within designated critical habitat for bull trout because the final rule identifies all areas that are essential to the conservation of bull trout, regardless of whether all of these areas are included in the regulatory designation.

Additionally, many partners at the Federal, State, local jurisdiction, private, and Tribal level have initiated active information programs. While this educational outcome is important for the conservation of bull trout, it is already being achieved through the existing management, education, and public outreach efforts carried out by landowners, conservation partners, and agencies. The plight of salmonids in the Pacific Northwest has been subject to a well-developed public outreach infrastructure that includes magazines, newsletters, well-publicized public events, annual festivals, school group activities, web-sites, and water-shed planning efforts. Consequently, few additional educational or informational benefits will be provided to bull trout if these areas are designated as critical habitat.

Voluntary Partnerships for Conservation and Restoration. Current and ongoing conservation activities for salmon are compatible with those for bull trout such that reestablishment of bull trout in historic range and recovery throughout its range should not be precluded in the future. Existing conservation efforts include the application of Federal and State funds to salmonid recovery through the Salmon Recovery Funding Board. Other programs are also focusing on both active and passive restoration of habitats. Many partners are cooperating to conducting monitoring and research.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and in accordance with section 4(b)(2) of the Act, we have analyzed the benefits of including Snake River Basin Adjudication, the Montana Bull Trout Restoration Plan, the Willamette and Malheur River Basins, and stream reaches regulated under PACFISH/INFISH as part of the critical habitat designation and the benefits of excluding these areas, and determined that the benefits of exclusion outweigh those of inclusion. Therefore, we have excluded all Federal, State and private lands covered under Snake River Basin Adjudication, all lands covered under the Montana Bull Trout Restoration Plan, Federal lands within the Willamette and Malheur River Basins, and Federal lands containing stream reaches regulated under PACFISH/INFISH as part of the critical habitat designation from this final designation of critical habitat for the bull trout pursuant to section 4(b)(2) of the Act. Further, we have determined that the exclusion of areas covered by these plans would not result in the extinction of the bull trout based on the benefits provided the species through the plan and our consultation on these programs under section 7 of the Act.

All Waters Impounded Behind Dams (Reservoirs and Pools)

All waters impounded behind dams (reservoirs and pools) were excluded due to the potential for social and economic effects. In the case of reservoirs, the economic analysis found that potential modifications to the operations of reservoirs had the highest potential for economic effects. These costs result from consultations on ACOE and BOR dams and reservoirs, BPA consultations on the FCRPS, and FERC re-licensing consultations. ACOE and BOR consultations on dam and reservoir operations could lead to temperature control facilities, trap and haul passage, fish ladders, spillway modification and bull trout-related annual operation, maintenance, and study costs at various Federal dams. There is some potential for third party lawsuits to result in serious consequences for human health and safety as well as economic costs. Therefore, we have determined that the benefits of excluding lands covered by

these plans from the final designation of critical habitat for the bull trout outweighs the benefits of including them in the designation. Consequently, all impoundments behind dams are excluded from this critical habitat designation pursuant to section 4(b)(2) of the Act. Our rationale for these exclusions is discussed below.

(1) Benefits of Inclusion

The principal benefit of any designated critical habitat is the requirement for consultation under section 7 of the Act for any activities having a Federal nexus that may adversely affect critical habitat. Consultation ensures that action entities avoid the destruction or adverse modification of critical habitat. However, these impoundments are already subject to consultation due to the presence of bull trout. Therefore, we find that the benefits of inclusion are low.

(2) Benefits of Exclusion

Most of the forecast project modification costs resulting from the designation are dam and reservoir related (excluding USFS water diversions). These costs result from consultations on ACOE and BOR dams and reservoirs, BPA consultations on the FCRPS, and FERC re-licensing consultations. Particularly, in the case of the Willamette Basin Unit the cost of potential modifications to the ACOE Upper Willamette System Dams likely will be disproportionately large when compared to costs associated with other units. ACOE and BOR consultations on dam and reservoir operations could lead to temperature control facilities, trap and haul passage, fish ladders, spillway modification and bull trout-related annual operation, maintenance, and study costs at various Federal dams. In addition there is some concern that third party lawsuits may result in reservoir and dam operation conditions that have consequences to human health and safety. For these reasons, we believe the benefits of exclusion are high.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Because the benefits of inclusion are low, and the benefits of exclusion are high, both in economic terms and with respect to potential concerns about human health and safety, we find that the benefits of exclusion outweigh the benefits of inclusion for dams and reservoirs throughout the proposed designation. Consequently, all impoundments behind dams are excluded from this critical habitat designation pursuant to section 4(b)(2) of the Act.

Lewis River Hydroelectric Projects Conservation Easements

We have been working with PacifiCorp since 1995 on relicensing the Yale hydroelectric project in Washington. Subsequently, NOAA—Fisheries and Cowlitz County PUD and other participants joined this process and included relicensing of Merwin, Swift No. 1, and Swift No. 2 hydroelectric projects on the Lewis River. We completed the biological opinion for the interim operation of the Lewis River hydroelectric projects in June 2002 (Service 2002d). Conservation measures were incorporated in the project description to minimize or compensate for the effects of the projects on listed species, including bull trout. Conservation measures included perpetual conservation easements on PacifiCorp's lands in the Cougar/Panamaker Creek area and along the Swift Creek arm of Swift Creek Reservoir. PacifiCorps signed and notarized covenant agreements and filed Cougar Creek in Clark and Cowlitz Counties, and Swift Creek in Clark and Skamania Counties (PacifiCorps 2003 a, b, c, d).

Swift Creek 0.3 mi (0.5 km) up to a barrier falls is likely used for foraging because habitat in this lower section of the creek is an extension of the Swift Arm segment of Swift Creek Reservoir. Swift Creek Reservoir provides foraging and overwintering habitat for the Pine and Rush Creek bull trout local populations, and subadult bull trout are known to use the Swift Arm segment of the reservoir. Actual use of the lower section of Swift Creek by bull trout is unknown; spawning and rearing is not known to occur here. Conservation measures for Swift Creek will be implemented including: (1) Conserving and protecting habitat for bull trout, cutthroat trout, and other aquatic species; (2) monitoring to minimize sedimentation due to human disturbance; and (3) development and implementation of vegetation management practices to include, but be not limited to, removal of nonnative or invasive plant species (PacifiCorp 2003 a, b).

Cougar Creek 1.7 mi (2.7 km) upstream to a lava tube barrier contains the smallest of the three local populations of bull trout in the Lewis River. Conservation measures included in PacifiCorp's conservation easement include: (1) Management to conserve and protect spawning and rearing habitat for bull trout; (2) monitoring to assure no detrimental changes to bull trout habitat have occurred due to upland management activities, winter storm damage, or other causes; (3) development and implementation of vegetation management practices to include, but will not be limited to, removal of nonnative or invasive plant species; and (4) development and implementation of a road maintenance plan to include provisions for repair or closure of roads (PacifiCorp 2003 c, d). The latter will include closing a road on the southeast boundary of the Cougar Creek lands to all vehicular access except maintenance equipment. In addition to these conservation measures, under the terms and conditions of the 2002 biological opinion, PacifiCorp will continue to develop annual plans and fund the cost of the net and haul system in place at the Yale tailrace (area below dam). Since 1995, the capture and transport of bull trout from the Yale tailrace to the mouth of Cougar Creek has probably contributed significantly to the spawning population (Service 2002).

We assessed the adequacy of the conservation easements to ensure that they provided: (1) A benefit to bull trout; (2) assurances of implementation; and (3) assurances they would be effective. We determined that bull trout will benefit from implementation of the conservation measures that are part of the conservation easements for Swift and Cougar Creeks. Thus, we have excluded lands within the conservation easements for Swift and Cougar Creeks from this final designation of critical habitat of the bull trout pursuant to section 4(b)(2) of the Act.

(1) Benefits of Inclusion

The principal benefit of any designated critical habitat is the requirement for consultation under section 7 of the Act for any activities having a Federal nexus that may adversely affect critical habitat. Consultation ensures that action entities avoid the destruction or adverse modification of critical habitat.

Habitat identification essential to the conservation of the species can provide information benefits to the public, State and local governments, scientific organizations, and Federal agencies. The heightened public awareness of the plight of listed species and their habitats may facilitate conservation efforts. However, we believe little additional informational benefit will be gained by including Swift and Cougar Creeks in designated critical habitat for bull trout. PacifiCorps has begun implementing conservation recommendations, provided in our 2002 biological opinion, that include posting interpretive signs to

educate anglers on identifying and conserving native char, and techniques for catch and release to minimize incidental hooking mortality of bull trout. While we believe educational benefits are important for the conservation of bull trout, we believe it has already been achieved through PacifiCorp's conservation easement, publication of the proposed critical habitat rule, the many public and interagency meetings that have been held to discuss the proposal, and discussion contained in this final rule.

(2) Benefits of Exclusion

The benefits of excluding lands from critical habitat designation include maintaining and enhancing our ability to negotiate with hydroelectric power companies, counties, and other participants in relicensing negotiations. The complex process of negotiating relicensing for the Lewis River hydroelectric projects has been ongoing for 9 years. We have established valuable working relationships with the PacifiCorps, Cowlitz County PUD, and the other participants during these complex negotiations. Through the relicensing negotiations, we have built trust and encouraged open dialogue regarding aquatic and riparian management issues among the participants.

Excluding Swift Creek and Cougar Creek from critical habitat based on conservation easements will help maintain trust in our intentions to honor our agreements and facilitate negotiations for the final issuance of the new Lewis River hydroelectric project licenses. It will also facilitate our ability to negotiate in future consultations on other relicensing projects. The introduction of additional Federal influence through critical habitat designation could impact the spirit of cooperation established over the last several years. Exclusion would avoid impacting ongoing and future cooperative efforts, and will reduce the cost and logistical burden of unnecessary regulatory oversight.

The benefits of excluding areas covered by conservation easements from being designated critical habitat include relieving landowners and counties of any additional regulatory review that result from such a designation. Imposing an additional regulatory review after completion of conservation easements with adequate conservation measures may jeopardize conservation efforts and could be viewed as a disincentive to those developing conservation easements.

An additional benefit of excluding conservation easement areas is the encouragement of continued development of partnerships with States, local governments, conservation organizations, and private landowners. By excluding areas covered by conservation easements from designated critical habitat, we encourage more effective conservation actions in the future that would allow implementation of conservation actions we would be unable to accomplish alone.

Other important conservation benefits to developing conservation easements include developing biological information to guide conservation efforts and assist in species' recovery, and the creation of innovative solutions to conserve species while allowing commercial activity.

The conservation easements will provide greater conservation benefits to bull trout because they will assure long-term protection and management of bull trout in Swift and Cougar Creeks. Such assurances are typically not provided by section 7 consultations that, in contrast to conservation easements with conservation measures, often do not commit the project proponent to long-term species and habitat protections. Also, the protections of section 7, with respect to the jeopardy standard, and section 9 will still be in effect and will result in actions that protect the species.

By excluding lands included in the two conservation easements from designated critical habitat we will: (1) Maintain and enhance our ability to continue working with PacifiCorp, Cowlitz County PUD, FERC and other relicensing applicants; and (2) other jurisdictions, private landowners, and other entities will likely continue to see the benefit of working cooperatively with us. This will provide incentives to develop other conservation agreements, or other conservation actions such as HCPs, to provide the bases for future opportunities to conserve species and their habitats. Negotiating conservation measures under conditions of mutual trust can result in greater conservation benefits to the species than would result from including Swift and Cougar Creeks in designated critical habitat.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and in accordance with section 4(b)(2) of the Act, we have determined that the benefits of excluding Swift and Cougar Creeks from critical habitat because the benefits of excluding them outweigh the benefits of including them in this final critical habitat designation. The net benefit of including them has been significantly minimized by PacifCorp's commitment to coordinate with us on their activities that may adversely affect these two streams. Conservation measures adopted by PacifiCorp will provide tangible benefits that will reduce the likelihood of extinction and increase the chances of recovery. Excluding these areas from designated critical habitat will not result in extinction of the species, particularly with implementation of the conservation measurements defined in the conservation easements, continuation of the capture and transport of bull trout from the Yale tailrace to Cougar Creek, and other conservation measures identified in our 2002 biological opinion. Consequently, we believe there is little or no additional benefit to bull trout by including Swift and Cougar Creeks in designated critical habitat.

The management commitments by PacifiCorp lead us to conclude that any additional, incremental regulatory benefits provided by a final critical habitat designation on their lands would be relatively small. Although we are excluding these streams, we still consider them essential to the conservation of the species. However, neither section 7 consultations nor a critical habitat designation would necessarily result in the implementation of actions needed for recovery of these species. PacifiCorp has committed to several proactive conservation management activities that will provide a conservation benefit to the species. We believe the benefits of critical habitat designation to be small for these two streams covered by conservation easements with adequate conservation measures, and the benefits of excluding them are significant. The conservation measures provided these two streams under the terms of our 2002 biological opinion and incorporated into the conservation easements will provide sufficient protection and provide conservation benefits to the species. The benefits of excluding Swift and Cougar Creeks from designated critical habitat outweigh the benefits of inclusion. Swift Creek Reservoir, the Swift Arm segment of the reservoir, and Pine and Rush Creeks are still included in designated critical habitat.

Military Lands

Bayview Acoustic Research Detachment (ARD)

The Bayview ARD, Naval Surface Warfare Center, Bayview, ID, property includes approximately 22 ac (9 ha) of developed land on the shore of Lake Pend Oreille and 16 ac (7 ha) of lake area. There are no tributary streams within this area utilized by bull trout for

spawning or early life rearing, but the lake area does contain important FMO habitat for bull trout.

(1) Benefits of Inclusion

The benefits of designating critical habitat on Bayview ARD are minimal because: (1) Of the small area that it encompasses; and (2) it only provides limited habitat that may only occasionally be used by bull trout with respect to the rest of Lake Pend Oreille. The area of lake bottom included in the Bayview ARD property does, however, contain some of the best kokanee spawning habitat in Lake Pend Oreille, and kokanee are a primary forage item for bull trout. Bayview ARD has submitted a draft integrated natural resource management plan (INRMP), which outlines protection and management strategies for natural resources on the center, including fish species and their habitats.

(2) Benefits of Exclusion

Designating critical habitat on Bayview ARD may impact their role in supporting ongoing U.S. Navy research, development, test, and evaluation programs in underwater acoustics. These efforts include the use of large scale models to simulate the characteristics of current and future Navy submarines in order to develop and evaluate advances in submarine silencing technology. Performing acoustic testing on large scale models provides the same accuracy as testing on actual submarines at a significantly lower cost. Bayview ARD is the only Navy facility capable of testing large scale models for hull-induced flow noise and propulsor noise, and the knowledge gained from these tests are directly applied to reducing the detectability of Navy submarines (Department of the Navy 2003).

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding Bayview ARD as critical habitat outweigh the benefits of including it as critical habitat for bull trout. Further, we have determined that excluding the Bayview ARD will not result in the extinction of the bull trout. If significant additional information becomes available that changes our analysis of the benefits of excluding Bayview ARD from this critical habitat designation, we may revise this final designation accordingly.

Tribal Lands

We have considered whether or not Confederated Tribes of Warm Springs Reservation of Oregon (CTWS) Tribal lands should be excluded under subsection 4(b)(2) of the Act, which allows us to exclude areas from critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species.

(1) Benefits of Inclusion

Habitat essential to bull trout conservation exists within CTWS lands. The primary direct benefit of inclusion of these lands as critical habitat would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed Federal actions do not destroy or adversely modify critical habitat. The benefit of a critical habitat designation would ensure that any actions authorized, funded, or carried out by a Federal agency would not likely destroy or adversely modify any critical habitat.

Another possible benefit of designating critical habitat is that the designation can educate the public regarding the potential conservation value of an area. This may contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for the bull trout. Information about bull trout and their suitable habitat that was identified on CTWS lands could have a positive conservation benefit for the species. While we believe this educational outcome is important for bull trout conservation, we believe it has already been achieved through the existing management, education, and public outreach efforts carried out by the CTWS. A final designation of critical habitat on CTWS lands would simply affirm the recognized conservation value of these lands, which is already widely accepted by conservationists, public agencies, and most of the public.

We believe that a critical habitat designation for the bull trout on CTWS lands would provide a relatively low level of additional benefit. Any regulatory conservation benefits would accrue through the benefit associated with additional section 7 consultation associated with critical habitat. Based on a review of past consultations and consideration of the likely future activities in this specific area, there is little Federal activity expected to occur on CTWS lands that would trigger section 7 consultation. We also believe that a final critical habitat designation provides little additional educational benefits since the conservation value is already well known by the CTWS, the State, Federal agencies, private organizations, and the public.

(2) Benefits of Exclusion

Proactive voluntary conservation efforts are necessary to prevent the extinction and promote the recovery of the bull trout on CTWS lands. This is especially important in areas where the bull trout has been extirpated and its recovery requires access and permission for reintroduction efforts. For example, bull trout have been extirpated from some streams on CTWS lands, and repopulation is not likely without CTWS cooperation. The CTWS has a long history of carrying out proactive conservation actions on their lands. The CTWS's management plans provide guidelines for land uses that affect CTWS resources and serve as the basis for Tribal management decisions. We believe that the bull trout will benefit substantially from the CTWS's voluntary management actions due to their long-standing and broad application to Tribal management decisions.

We believe that exclusion of CTWS lands from critical habitat would have substantial benefits including the: (1) Furtherance of our Federal trust obligations; (2) establishment and maintenance of effective working relationships to promote the conservation of bull trout while streamlining the consultation process; (3) allowance for meaningful collaboration and cooperation in scientific studies to learn more about the life history and habitat requirements of bull trout populations that occur on their land; and (4) providing conservation benefits that might not otherwise occur to bull trout that depend on Tribal streams. Where consistent with the discretion provided by the Act, we believe it is necessary to implement policies that provide positive incentives to voluntarily conserve natural resources and that remove or reduce disincentives to conservation. Thus, we believe it is essential for the recovery of bull trout to build on continued conservation activities with a proven partner such as the CTWS, to provide positive incentives implementing voluntary conservation activities, and to respect CTWS concerns about incurring incidental regulatory or economic impacts.

Three of the five remaining bull trout populations in the lower Deschutes River exist on CTWS lands. Therefore, a successful recovery program is highly

dependent on developing working partnerships with a wide variety of entities, and the voluntary cooperation of the CTWS and others is essential to accomplishing recovery for listed species such as the bull trout. Because bull trout populations are located on CTWS lands, successful recovery of the bull trout in the Deschutes River basin is especially dependent upon working partnerships and the voluntary cooperation of the CTWS.

We believe that excluding these CTWS lands from critical habitat will help maintain and improve our partnership relationship by recognizing the CTWS's positive contribution to bull trout conservation. It will also reduce the cost and logistical burden of regulatory oversight. We believe this recognition will provide other landowners with a positive incentive to undertake voluntary conservation activities on their lands, especially where there is no regulatory requirement to implement such actions. Few additional benefits are provided by including the CTWS lands in this critical habitat designation beyond what will be achieved through the implementation of the CTWS's existing conservation plans.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding CTWS lands as critical habitat for the bull trout outweigh the benefits of including them as critical habitat. We have also determined that the exclusion will not result in the extinction or endangerment of the species. The combined benefits of excluding these habitats are significant and include:

(1) Furtherance of our Federal trust obligations, including consistency with our government-to-government responsibilities under Secretarial Order 3206 and Executive Order 13175.

(2) Maintaining the effective working relationship that exists between the Service and CTWS. CTWS lands are already being managed to conserve bull trout. We believe that the bull trout will benefit from CTWS's voluntary management actions due to their long-standing and broad application to Tribal management decisions. Tribal lands are currently being managed on a voluntary basis in cooperation with the Service and others to achieve important conservation goals.

(3) Continuing the productive cooperative scientific efforts between the Service and CTWS. Tribal cooperation and support is required to prevent extinction and promote the recovery of listed species. Cooperation and support is required to prevent the extinction and promote the recovery of the bull trout due to the need to implement proactive conservation actions. This need for CTWS cooperation is especially acute because three of the five Deschutes River basin populations exist on CTWS lands. Future conservation efforts will require the cooperation of CTWS. Exclusion of CTWS lands from this critical habitat designation will help us maintain and improve our partnership with the CTWS by formally recognizing the positive contributions of the CTWS to bull trout recovery, and by streamlining or reducing unnecessary regulatory oversight.

(4) Recognition and continuation of the conservation benefits to the bull trout that come from the CTWS's existing conservation programs. The CTWS has cooperated with us to implement proactive conservation measures. They have cooperated with Federal and State agencies, and private organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits.

Given the cooperative relationship between CTWS and the Service, we believe the additional regulatory and educational benefits of including these lands as critical habitat are relatively small. The designation of critical habitat can serve to educate the public regarding the potential conservation value of an area, but this goal is already being accomplished through the identification of these areas in the management plans described above and through the CTWS's outreach efforts.

We considered whether or not excluding these stream sections on CTWS lands would result in the extinction of bull trout within the foreseeable future. We have concluded that CTWS's voluntary conservation efforts will provide tangible conservation benefits that will reduce the likelihood of extinction and increase the likelihood for recovery. The exclusion of these areas will not increase the risk of endangerment or extinction to the bull trout, and may increase the likelihood that bull trout will recover by encouraging the CTWS to implement additional voluntary conservation measures.

The above analysis concludes that excluding CTWS lands from critical habitat will have a net beneficial impact with little risk of negative impacts. Thus, excluding these lands will not cause extinction of the bull trout, and may improve the chances for its recovery on CTWS lands.

CTWS Boundary Streams: Our analysis for the November 29, 2002 (67 FR 71235) proposed designation of critical habitat found that management within Warm Springs Tribal Conditional Use Areas (CUAs) provides a sufficient level of protection and certainty of implementation such that special management considerations or protection is not required. We did not include 39 mi (63 km) of streams within the CUAs as part of our proposed designation of critical habitat because we did not believe that these stream segments met the definition of critical habitat. However, we made an exception to our general finding regarding CUAs on the CTWS Reservation's southern and southeastern boundaries, where the boundary is defined by the Metolius and Deschutes Rivers. Here, we found that there was some uncertainty as to the ability of the Tribal management plans to adequately protect the entire waterway up to the river's bankfull elevation on either shore. This is because the opposite shore is not part of the Reservation and is not managed as part of a CUA. Therefore, we included the Metolius and Deschutes Rivers from bank to bank along the Reservation boundary as part of our proposed designation of critical habitat.

We have reassessed our proposed critical habitat designation along those streams which form the reservation's boundary. The 1855 Treaty between the CTWS and United States extends CTWS jurisdiction to the bankfull elevation on the opposite shore of the CTWS reservation boundary at Jefferson Creek and the Metolius River, and to the mid-point of the Deschutes River where it forms the reservation boundary. Executive Order 13175 and the Secretarial Order 3206 instruct us to respect Tribal self-government and sovereignty when considering a critical habitat designation on Tribal lands. Thus, we must assess whether Tribal management plans for Tribal trust resources are adequate to achieve the necessary conservation purpose. While this discussion mentions Tribal "lands,'' we have no reason to believe that this logic should not also extend to Tribal "waters.''

Based on the above information, we find that the appropriate boundary on which to base a determination regarding the extent of critical habitat is the CTWS reservation boundary, which is the bankfull elevation on the opposite shore of Jefferson Creek (G3) and the Metolius River (E1), and the mid-point of the lower Deschutes River (A1), and the mid-point of the three Deschutes River

reservoirs (A2, A3, A4), where they form the reservation boundary. We find that the management provided within Warm Springs Tribal CUAs provides a sufficient level of protection and certainty of implementation such that special management considerations or protection is not required on Jefferson Creek (G3) and the Metolius River (E1). Therefore, on the basis of section 4(b)(2) of the Act, we will not include Jefferson Creek (G3) and the Metolius River (E1) in our final designation of critical habitat. We will not include the lower Deschutes River (A1) and the three Deschutes River reservoirs (A2, A3, A4) to their mid-point in our final designation of critical habitat, because the benefits of exclusion outweigh the benefits of inclusion.

Our reassessment of Tribal CUAs also found that our proposed designation of critical habitat had made several mapping errors. We included several streams which we had intended to exclude because they are within Tribal CUAs. These include the Whitewater River (F1), Parker Creek (G4), Bunchgrass Creek in the upper Warm Springs River (B1), and the upper Warm Springs River (B3) (B4) (B5). We are excluding these streams in this final rule.

We have reviewed the overall effect of the exclusion of the above-mentioned approved and draft HCPs, FFR, Tribal lands, and military installations for bull trout and their essential habitat. We have determined that the benefits of excluding these areas outweigh the benefits of including them in this critical habitat designation. Designation of critical habitat in these areas would most likely have a negative effect on the recovery and conservation of bull trout. The removal of these lands from critical habitat designation, as a result of these exclusions, will not lead to the species' extinction.

Stream Reaches Less Than 0.5 mi (0.8 km) in Length Under Private Land Ownership

During the development of the final designation, we determined that there were an estimated 1,831 stream segments under private landownership that were less than 0.5 mi (0.8 km) in length, accounting for approximately 287 mi (462 km) reaches in the proposed designation. We evaluated these stream segments to confirm whether they were essential to the conservation of the bull trout and to determine if the reaches warranted exclusion from the final designation pursuant to section 4(b)(2) of the Act based on disproportionate regulatory impacts to the private landowners or preservation of conservation partnerships. On the basis of this evaluation, we determined that these specific stream reaches warranted exclusion from the final designation pursuant to section 4(b)(2) of Act. Our rational for this determination is discussed below.

(1) Benefits of Inclusion

The principal benefit of any designated critical habitat is the requirement for consultation under section 7 of the Act for any activities having a Federal nexus that may adversely affect critical habitat. Consultation ensures that action entities avoid the destruction or adverse modification of critical habitat

Another possible benefit to including these lands is that the designation of critical habitat can serve to educate landowners and the public regarding the potential conservation value of an area. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species.

(2) Benefits of Exclusion

One benefit would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed actions do not destroy or adversely modify critical habitat. The economic analysis estimates that there have been over 200 formal consultations and thousands of informal consultations involving bull trout since its listing in 1998, and has involved numerous Federal action agencies. However, unless there are other types of Federal permitting or authorization within this area, private, and State-owned lands would not be affected.

Regulatory and protective conservation measures are already anticipated from the future consultations regarding the activities described above. Consequently, we do not believe that designating critical habitat within these areas would provide significant additional regulatory benefits for bull trout, and in fact, may result in disproportionate regulatory and economic impacts to private land owners.

Education/Information. In *Sierra Club* v. *Fish and Wildlife Service,* 245 F.3d 434 (5th Cir. 2001), the Fifth Circuit Court of Appeals stated that the identification of habitat essential to the conservation of the species can provide informational benefits to the public, State and local governments, scientific organizations, and Federal agencies. The court also noted that heightened public awareness of the plight of listed species and their habitats may facilitate conservation efforts. We agree with these findings; however, we believe that there would be little additional informational benefit gained from including these areas within designated critical habitat for bull trout because the final rule identifies all areas that are essential to the conservation of bull trout, regardless of whether all of these areas are included in the regulatory designation.

Additionally, many partners at the Federal, State, local jurisdiction, private, and Tribal level have initiated active information programs. While this educational outcome is important for the conservation of bull trout, it is already being achieved through the existing management, education, and public outreach efforts carried out by landowners, conservation partners, and agencies. The plight of salmonids in the Pacific Northwest has been subject to a well-developed public outreach infrastructure that includes magazines, newsletters, well-publicized public events, annual festivals, school group activities, Web sites, and water-shed planning efforts. Consequently, few additional educational or informational benefits will be provided to bull trout if these areas are designated as critical habitat.

Voluntary Partnerships for Conservation and Restoration. Current and ongoing conservation activities for salmon are compatible with those for bull trout such that reestablishment of bull trout in historic range and recovery throughout its range should not be precluded in the future. Existing conservation efforts include the application of Federal and State funds to salmonid recovery through the Salmon Recovery Funding Board. Other programs are also focusing on both active and passive restoration of habitats. Many partners are cooperating to conducting monitoring and research.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and in accordance with section 4(b)(2) of the Act, we have analyzed the benefits of including the 1,831 stream reaches that are less than 0.5 mi (0.8 km) in length that are under private landownership as part of the critical habitat designation. We have determined that the benefits of exclusion outweigh those of inclusion. Therefore, we have excluded the 1,831 stream reaches from this final designation of critical habitat for the bull trout pursuant to section 4(b)(2) of the Act. Further, we have determined that the exclusion of the 1,831 stream

reaches would not result in the extinction of the bull trout based on the benefits provided the species through existing management plans.

Critical Habitat Designation. Within the geographical areas presently known to be occupied by the Klamath River and Columbia River populations, we are designating only areas currently or historically occupied and known to be essential to the conservation of bull trout. We have found those occupied areas designated as essential to the conservation of the species, but the Secretary has not found any areas currently unoccupied as essential to the conservation of bull trout (50 CFR 424.12(e)). These areas designated already contain features and habitat characteristics that are necessary to sustain the species, and we do not foresee any changes to current practices in those areas. Rather, these designations designed to maintain existing practices and characteristics, and to review proposed changes where there is a Federal nexus in order to ensure that existing conditions remain unchanged with respect to their contribution to the conservation of bull trout. We are designating areas that currently have enough of the PCEs to provide essential life-cycle requisites of the species, as defined at 50 CFR 424.12(b). Moreover, certain areas with known occurrences of bull trout have not been designated as critical habitat. We did not designate critical habitat for some small scattered occurrences or habitats that are in highly fragmented areas, or no longer have hydrologic conditions that are sufficient to maintain bull trout habitat. We do not believe, based on the best available scientific information, that these areas are essential to the conservation of the species. Where information was unavailable, or we were uncertain as to whether those areas would, in fact, prove essential to the conservation of the species, we have not designated critical habitat. However, if future information proves that additional areas are necessary, we will revise our critical habitat designation.

The designated critical habitat areas described below constitute our best assessment at this time of the stream reaches, lakes, and marshes that are essential to the conservation of the Klamath River and Columbia River bull trout populations. We are designating approximately 1,748 mi (2,813 km) of streams and 61,235 ac (24,781 ha) of lakes and marshes for the Klamath River and the Columbia River populations of bull trout.

The lateral extent of critical habitat, for each designated stream reach, is the width of the stream channel as defined by its ordinary high line. Critical habitat extends from the ordinary high-water line as defined by the Corps in 33 CFR 329.11 and shall be used to determine the lateral extent of critical habitat. Adjacent floodplains are not designated as critical habitat. However, it should be recognized that the quality of aquatic habitat within stream channels is intrinsically related to the character of the floodplains and associated riparian zones, and human activities that occur outside the river channels can have demonstrable effects on physical and biological features of the aquatic environment. The lateral extent of lakes and reservoirs is defined by the perimeter of the water body as mapped on standard 1:24,000 scale maps (comparable to the scale of a 7.5 minute USGS Quadrangle topographic map).

Critical habitat includes bull trout habitat across the species' range in Idaho, Montana, Oregon, and Washington. Lands adjacent to designated critical habitat are under private, State, Tribal, and Federal ownership. The areas we are designating as critical habitat, described below, constitute our best assessment of areas essential to the conservation of the Klamath and Columbia River populations of bull trout.

In our proposed designation of critical habitat for the Klamath and Columbia River populations of the bull trout (November 29, 2002 (67 FR 71235)), we proposed to designate critical habitat in 25 CHUs that corresponded to recovery units identified in the draft Recovery Plan. For additional information regarding stream segments and bodies of water proposed for designation, please refer to the proposed critical habitat rule. However, we have excluded many areas determined to be essential to the conservation of bull trout from this final designation pursuant to section 4(b)(2) of the Act. As such, only 13 of the original 25 units are being designated as critical habitat for the Klamath and Columbia River populations of the bull trout. Please refer to the Regulations Promulgated section of this final rule for the descriptions of areas designated as critical habitat.

The approximate area designated as critical habitat for the Klamath and Columbia River populations of the bull trout by critical habitat unit are listed in Table 1

TABLE 1.—APPROXIMATE AREA DESIGNATED AS CRITICAL HABITAT FOR THE KLAMATH AND COLUMBIA RIVER POPULATIONS OF THE BULL TROUT BY CRITICAL HABITAT UNIT

Critical Habitat Unit	Stream Miles	Acres
Clark Fork River Basin	163	.....
Deschutes River Basin	39	.....
Grande Ronde River Basin	300	.....
Hells Canyon Complex	125	.....
Hood River Basin	30	.....
Imnaha-Snake River Basins	87	.....
Klamath River Basin	42	33,939
Umatilla-Walla Walla River Basins	241	.....
Coeur d'Alene Lake Basin	119	27,296
Lower Columbia River Basin	121	.....
Middle Columbia River Basin	269	.....
Northeast Washington River Basins	119	.....
Snake River Basin in Washington	94	.....
Total	1,748	61,235

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.2, we define destruction or adverse modification as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: Alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' We are currently reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a) of the Act requires Federal agencies, including the Service, 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 proposed or 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 us 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. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. 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. Through this consultation, the action agency ensures that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. "Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the destruction or adverse modification of 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 critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law.

We may issue a formal conference report, if requested by the Federal agency. Formal conference reports on proposed critical habitat contain a section 7(a)(2) finding that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as a biological opinion when critical habitat is designated, if no substantial new information or changes in the action warrant changes to the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect the bull trout or its designated critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the Corps under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, FHA, Federal Aviation Administration, or Federal Emergency Management Agency (FEMA)), will also continue to be subject to compliance with section 7(a)(2) of the Act. Federal actions not affecting listed species or critical habitat, and actions which affect critical habitat but not a listed species, on non-Federal and private lands that are not federally funded, authorized, or permitted, do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat to the bull trout. We note that such activities may also jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify'' critical habitat are those that would appreciably reduce the conservation value of critical habitat to the listed species.

All areas designated as critical habitat are determined to be essential to the conservation of the bull trout, but some areas are currently not known to be occupied. Although these specific areas are not known to be occupied, they are within the geographical area occupied by bull trout. Areas with low levels of bull trout occupancy, or where presence of the species is undetermined, were included when they provided connectivity between areas of high-quality habitat, access to an abundant food base, served as important migration corridors for fluvial or adfluvial fish, or were identified in the draft Recovery Plan as necessary for local population expansion or reestablishment in order to achieve recovery, so that delisting can occur. Restoration of reproducing bull trout populations to additional portions of their historical range would significantly reduce the likelihood of extinction due to natural or human-caused factors that might otherwise further reduce population size and distribution. Thus, an integral component of the draft Recovery Plan is the selective reestablishment of secure, self-sustaining populations in certain areas where the species has apparently, but not necessarily conclusively, been extirpated. However, we believe, and the economic analysis discussed below illustrates, that the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. Few additional consultations are likely to be conducted due to the designation of critical habitat.

A number of Federal activities have the potential to destroy or adversely modify critical habitat for the bull trout. These activities may include land and water management actions of Federal agencies (*e.g.*, Corps, BOR, USFS, BLM, Natural Resources Conservation Service, and Bureau of Indian Affairs) and related or similar actions of other Federally regulated projects (*e.g.*, road and bridge construction activities by the FHA; dredge and fill projects, sand and gravel mining, and bank stabilization activities conducted or authorized by the Corps; and, National Pollutant Discharge Elimination System permits authorized by the EPA).

Specifically, activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for the bull trout is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for the bull trout include, but are not limited to:

(1) Significant and detrimental altering of the minimum flow or the natural flow regime of any of the designated stream segments. Possible actions would include groundwater pumping, impoundment, water diversion, and hydropower generation. We note that such flow alterations

resulting from actions affecting tributaries of the designated stream reaches may also destroy or adversely modify critical habitat;

(2) Alterations to the designated stream segments that could indirectly cause significant and detrimental effects to bull trout habitat. Possible actions include vegetation manipulation, timber harvest, road construction and maintenance, prescribed fire, livestock grazing, off-road vehicle use, powerline or pipeline construction and repair, mining, and urban and suburban development. Riparian vegetation profoundly influences instream habitat conditions by providing shade, organic matter, root strength, bank stability, and large woody debris inputs to streams. These characteristics influence water temperature, structure and physical attributes (useable habitat space, depth, width, channel roughness, cover complexity), and food supply (Gregory *et al.* 1991; Sullivan *et al.* in Naiman *et al.* 2000). The importance of riparian vegetation and channel bank condition for providing rearing habitat for salmonids in general is well documented (*e.g.*, Bossu 1954 and Hunt 1969, cited in Beschta and Platts 1987; MBTSG 1998);

(3) Significant and detrimental altering of the channel morphology of any of the designated stream segments. Possible actions would include channelization, impoundment, road and bridge construction, deprivation of substrate source, destruction and alteration of aquatic or riparian vegetation, reduction of available floodplain, removal of gravel or floodplain terrace materials, excessive sedimentation from mining, livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances. We note that such actions in the upper watershed (beyond the riparian area) may also destroy or adversely modify critical habitat. For example, timber harvest activities and associated road construction in upland areas can lead to changes in channel morphology by altering sediment production, debris loading, and peak flows;

(4) Significant and detrimental alterations to the water chemistry in any of the designated stream segments. Possible actions would include release of chemical or biological pollutants into the surface water or connected groundwater at a point source or by dispersed release (non-point);

(5) Activities that are likely to result in the introduction, spread, or augmentation of nonnative aquatic species in any of the designated stream segments. Possible actions would include fish stocking for sport, aesthetics, biological control, or other purposes; use of live bait fish; aquaculture; construction and operation of canals; and interbasin water transfers; and

(6) Activities that are likely to create significant instream barriers to bull trout movement. Possible actions would include water diversions, impoundments, and hydropower generation where effective fish passage facilities, mechanisms, or procedures are not provided.

If you have questions regarding whether specific activities will likely constitute destruction or adverse modification of critical habitat, contact the Field Supervisor of the nearest Fish and Wildlife Ecological Services Office. Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the Division of Endangered Species, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, OR 97232–4181 (telephone 503/231–6158; facsimile 503/231–6243).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available for public review on April 5, 2004 (69 FR 17634). We accepted comments on the draft analysis until May 5, 2004.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for the bull trout. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. For example, regional management plans such as the NWFP, PACFISH, and INFISH provide significant protection to bull trout and its habitat while imposing significant costs within the region. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

The analysis examines activities taking place both within and adjacent to the designation. It estimates impacts based on activities that are "reasonably foreseeable'' including, but not limited to, activities that are currently authorized, permitted, or funded, or for which proposed plans are currently available to the public. Accordingly, the analysis bases estimates on activities that are likely to occur within a 10-year time frame, from when the proposed rule became available to the public (November 30, 2002, 67 FR 71235). The 10-year time frame was chosen for the analysis because, as the time horizon for an economic analysis is expanded, the assumptions on which the projected number of projects and cost impacts associated with those projects becomes increasingly speculative. An exception to the 10-year analysis time horizon used in this analysis is for FERC licenses, which are renewed for up to 50 years. Accordingly, this analysis estimates the annualized costs of the expected impacts associated with section 7 bull trout consultations involving FERC re-licensing over a 50-year time horizon.

Costs can be expressed in terms of unit or river mile; both of these metrics are useful in describing economic impacts. On a cost per unit basis, the largest portion of forecast costs are expected to occur in Unit 4, the Willamette River Basin (18 percent). These costs are attributable to fish passage and temperature control projects and annual operating and maintenance and fish study costs at the

Corp's facilities in the Upper Willamette River System (Dexter, Lookout Point, Hills Creek, and Blue River Dams). The next most costly unit is Unit 16, the Salmon River Basin (12 percent). Because this is the largest unit in terms of river miles and proportion of USFS-managed land, and because future USFS activities are expected to generate approximately 70 percent of the consultation activity, this unit bears the greatest number of future bull trout-related consultations. Therefore, the administrative costs account for a large portion of the costs in this unit. Together, these two units account for 30 percent (approximately $8.2 million) of forecast costs. The next three most costly units, Hells Canyon complex (Unit 12), and the Clark Fork River (Unit 2), and Malheur River (Unit 13) Basins, each account for 8 percent (a unit cost range of approximately $2.1 million to $2.3 million) of forecast costs. In total, these five units account for almost 55 percent of forecast costs (approximately $14.8 million).

Based on our analysis, we concluded that the designation of critical habitat would not result in a significant economic impact, and estimated the potential economic effects over a 10-year period would range from $200 to $260 million ($20 to $26 million per year) for bull trout. It is expected that Federal agencies will bear 70 percent of these costs. The total estimated costs associated with bull trout consultation is expected be $9.8 million annually, and total project modification costs are expected to range from $19.5 to $26.1 million annually. Although we do not find the economic costs to be significant, they were considered in balancing the benefits of including and excluding areas from critical habitat.

A copy of the final economic analysis with supporting documents are included in our administrative record and may be obtained by contacting U.S. Fish and Wildlife Service, Branch of Endangered Species (*see* **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. As explained above, we prepared an economic analysis of this action. We used this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. We also used it to help determine whether to exclude any area from critical habitat, as provided for under section 4(b)(2), if we determine that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless we determine, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA also amended the RFA to require a certification statement.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term "significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting). We apply the "substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define "substantial number'' or "significant economic impact.'' Consequently, to assess whether a "substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect bull trout. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. The Columbia River and Klamath River populations of bull trout were federally listed as threatened in June 1998. In fiscal years 1998 through 2002, we conducted 152 formal section 7 consultations and several hundred informal consultations with other Federal agencies, mainly the USFS, to ensure that their actions will not jeopardize the continued existence of the bull trout.

Our economic analysis found that timber management, grazing, dam and reservoir operations, stream habitat improvement and fisheries restoration, road construction and maintenance, and flood control projects are the primary

activities anticipated to take place within the area designated as critical habitat for the bull trout. To be conservative (*i.e.*, more likely to overstate impacts than understate them), we assumed in our economic analysis that a unique business entity would undertake each of the projected consultations in a given year. Therefore, the number of businesses affected annually is equal to the total annual number of consultations (both formal and informal).

Based on the economic analysis which looked at the critical habitat for bull trout, and including consultations on FERC relicensing of hydroelectric facilities, we estimated that in each year, there could be approximately 52 formal consultations involving bull trout, and it is expected that the USFS will constitute about 70 percent of the total number of formal consultations.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for the approximately four small businesses, on average, that may be required to consult with us each year regarding their project's impact on bull trout and its habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or result in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal or plant species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this critical habitat designation. Within the final CHUs, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization implemented or licensed by Federal agencies;

(3) Regulation of timber harvest, grazing, mining, and recreation by the USFS and BLM;

(4) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities;

(5) Hazard mitigation and post-disaster repairs funded by the FEMA; and

(6) Activities funded by the EPA, U.S. Department of Energy, or any other Federal agency.

It is likely that a developer or other project proponent could modify a project or take measures to protect bull trout. The kinds of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, management of competing nonnative species, restoration of degraded habitat, and regular monitoring. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and proposed critical habitat designation. These measures are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether this would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons and based on currently available information, that it is not likely to affect a substantial number of small entities. Federal involvement, and thus section 7 consultations, would be limited to a subset of the area proposed. The most likely Federal involvement could include Corps permits, permits we may issue under section 10(a)(1)(B) of the Act, FHA funding for road improvements, hydropower licenses issued by FERC, and regulation of timber harvest, grazing, mining, and recreation by the USFS and BLM. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 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. This final rule to designated critical habitat for the bull trout is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

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:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, 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; AFDC 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 who receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. The designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the bull trout. Due to current public knowledge of the species' protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation. While real estate market values may temporarily decline following designation, due to the perception that critical habitat designation may impose additional regulatory burdens on land use, we expect any such impacts to be short term. Additionally, critical habitat designation does not preclude development of HCPs and issuance of incidental take permits. Owners of areas that are included in the designated critical habitat will continue to have opportunity to use their property in ways consistent with the survival and conservation of the bull trout.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in Washington, Oregon, Montana, and Idaho. The designation of critical habitat in areas currently occupied by the bull trout imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act of 1973, as amended. The final rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the bull trout.

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. 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

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, 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.

During our development of this critical habitat designation for the Columbia River and Klamath River populations of bull trout, we evaluated Tribal lands to determine if they are essential to the conservation of the species. We have designated critical habitat for portions of the Klickitat River and South Fork Ahtanum Creek within the Yakama Reservation; the Umatilla River, Meacham Creek, and Squaw Creek within the Umatilla Reservation; Lake Coeur d'Alene within the Coeur d'Alene Reservation; the Pend Oreille River within the Kalispell Reservation; the Clearwater River, North Fork Clearwater River, Middle Fork Clearwater River, South Fork Clearwater River, Lolo Creek, Clear Creek, and Dworshak Reservoir within the Nez Perce Reservation; portions of Flathead Lake, the lower Flathead River, and the Jocko River watershed on the Flathead Reservation; and portions of the Jocko River watershed, Mission Creek, and Post Creek on the CSKT lands on the Flathead Reservation. A total of approximately 144 mi (232 km) of stream segments and approximately 735 ac (297 ha) of lake/reservoir habitat on Tribal lands is included in our critical habitat designation.

Currently, the Yakama Nation, Coeur d'Alene, Kalispell, Nez Perce, CSKT, and Umatilla Tribes do not have resource management plans that provide protection or conservation for the bull trout and its habitat. The CSKT have a resource management plan addressing bull trout conservation that is being applied in the Jocko River watershed. However, as a result of our meetings with the Tribes on September 26, 2002, we mutually agreed to include habitat within the Jocko River watershed in this rule designating critical habitat (notes of government-to-government meeting, September 26, 2002, in our administrative record files).

We held government-to-government consultations with the Confederated Tribes of Warm Springs Reservation of Oregon (CTWS) to discuss their policy and position regarding the proposal. At these meetings, the CTWS provided us with documents pertaining to the Tribe's conservation activities which benefit the bull trout. These documents include their IRMP I and II, Water Code, Water Quality Standards, Implementation Plan for Water Quality, Water Resources Inventory, Streamside Management Plan, Field Guide to IRMP Standards and Best Management Practices. They also provided us with information on specific actions they have taken that benefit the bull trout.

During the last several decades, the CTWS has implemented many conservation measures on Tribal lands that have benefited bull trout. For example, their Comprehensive Plan is a broad document that includes Tribal ordinances, the Tribe's IRMPs, and Tribal resolutions. Ordinances are Tribal laws that address issues such as water use, water quality, implementation of water quality standards, natural resource management, and range management. The IRMPs include several resource assessment processes such as Project Impact Statements and Project Assessments, Best Management Practices, and the use of measurable standards for project evaluations. Tribal resolutions address fishing and hunting seasons on Tribal lands. The CTWS has closed the mouth of the Metolius River to fishing since 1997 to provide sanctuary to adult bull trout which gather here before beginning their upstream migration to spawning streams. The CTWS also implemented a bag limit of one bull trout per day in Lake Billy Chinook. The Tribe's Resource Management Interdisciplinary Team is responsible for implementing the measures described above (Robert Brunoe, CTWS, pers. comm. 2003).

Other conservation measures include habitat protection and restoration measures, as well as monitoring and research. The lower 6 mi (10 km) of Shitike Creek are a migratory corridor for bull trout, and have been affected by channel simplification and a headworks facility. The headworks facility was removed as part of the Lower Shitike Creek Habitat Improvement Project, which was adopted by Tribal Council as resolution 7838. The project was implemented in two phases between 1988 and 1989, to improve fish passage and increase Tribal fisheries resources in Shitike Creek. Instream habitat structures were constructed in lower Shitike Creek between 1990 and 1994 to increase channel complexity. The CTWS has also constructed numerous riparian fencing projects along the mainstem Deschutes River, Shitike Creek, and Warm Springs River. The CTWS has made efforts to prevent removal of large wood from the Metolius River and has replaced culverts in Bunchgrass Creek to facilitate upstream fish passage.

The CTWS has been actively involved in bull trout monitoring, research, and conservation efforts since 1998. This work has been focused mostly on the Warm Springs River, Shitike Creek, and the Whitewater River, which are on Tribal land and have bull trout populations. Tribal biologists have also performed research on bull trout in the mainstem Deschutes River. The CTWS collects data on juvenile bull trout abundance, has radio-tagged adult bull trout to track their seasonal migration (Brun 1999; Brun and Dodson 2000, 2001, 2002), and they plan to continue these activities in the future. The BPA has provided funding to the CTWS to determine bull trout life history, genetics, and abundance in the lower Deschutes River. Tribal biologists were participants in the Recovery Unit Team for our Deschutes River basin draft Recovery Plan.

The CTWS has written two IRMPs that address issues affecting bull trout. IRMP I pertains to forested lands, and was approved by Tribal Council on in 1992 as Tribal Ordinance 74. The Tribe's IRMP I discusses the history of Tribal forestry. During the 1940s and 1950s, the Tribes harvested ponderosa pine and took measures to protect forest health. Ponderosa pine forests were managed by selection cutting and shelterwood regeneration during the 1960s and 1970s. In the 1980s, they reduced harvest goals several times to increase protection for other resources. The IRMP provides management direction for some 398,466 ac (161,254 ha) of forested Tribal land. This includes a system of riparian buffers, leaving snags and live trees after harvest, erosion control, and transportation system management.

IRMP II pertains to non-forested and rural lands, and was approved by Tribal Council in 1999 as Resolution 9723. This action amended Ordinance 74 to include IRMP II. The Tribal IRMP II addresses 15 issues, including the location of Extensive Management Zones, management of woodlands outside of commercial forestry areas, uplands management, riparian management, fish screen criteria, transportation system management, and measures to protect, enhance, and reintroduce threatened or endangered species. It recommends average road density guidelines that reduce road density to less than 1.0 mi (1.6 km) per section in riparian and wetland zones. The IRMP II also recommends reducing the number of roads in non-forested

areas, and reducing impacts through road closures, culvert placement, and revegetation of cutbanks.

The Tribe's Streamside Management plan was written in 1982 to help maintain Tribal water quality standards and improve water quality. These standards became Tribal law when the Tribal Council adopted the Water Code in 1968 as ordinance number 45. Tribal Council also adopted the Implementing Provisions of the Water Code as resolution number 5772. It includes a stream classification system and management guidelines for forestry, fuel treatment, livestock, grazing, and transportation.

The Water Resource Inventory and Water Management Plan for the Warm Springs Indian Reservation was authorized by Tribal Council on August 3, 1967, as resolution number 2980. On April 17, 1968, Tribal Council passed ordinance number 45 to make the Water Management Plan the official Water Code of the Warm Springs Reservation. The plan determines what water resources exist on CTWS lands, the priority of present and future uses, and explains how to allocate and control water resource use. The plan assessed water needs for fish and biotic life, and stated that the volume of streamflow should never be reduced below that required for the maintenance of the biotic environment. It also established grazing capacity for the reservation, and made recommendations for grazing management. Though irrigation demands were minimal, the plan assessed Tribal demands for irrigation water.

The CTWS also published in 1992 a Field Guide to INRMP Standards and Best Management Practices. This guide included best management practices for forest activities, riparian areas, threatened and endangered species, fire management, forage management, transportation systems, and aquatic resources.

We are committed to maintaining a positive working relationship with all of the Tribes, and will work with them on developing resource management plans for Tribal lands that include conservation measures for bull trout.

References Cited

A complete list of all references cited in this proposed rule is available on request from the U.S. Fish and Wildlife Service, Branch of Endangered Species Office, Portland, OR (*see* **ADDRESSES** section).

Authors

The primary authors of this rule are the staff of the U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.11(h) revise the entry for "Trout, bull'' under "FISHES'' 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							
*	*	*	*	*	*		*
Trout, bull	*Salvelinus confluentus.*	U.S.A. (AK, Pacific NW into CA, ID, NV, MT), Canada (NW Territories).	U.S.A, coterminous (lower 48 states).	T	637, 639E, 659, 670	17.95(e)	17.44(w), 17.44(x).
*	*	*	*	*	*		*

■ 3. Amend § 17.95(e) by adding critical habitat for the bull trout (Salvelinus confluentus) in the same alphabetical order as this species occurs in § 17.11 (h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) * * *

Bull Trout (Salvelinus confluentus)

(1) Critical habitat is depicted for Ada, Adams, Benewah, Blaine, Boise, Bonner, Boundary, Butte, Camas, Canyon, Clearwater, Custer, Elmore, Gem, Idaho, Kootenai, Lemhi, Latah, Lewis, Nez Perce, Pend Oreille, Shoshone, Valley, and Washington Counties, ID; Deer Lodge, Flathead, Lake, Granite, Lewis and Clark, Lincoln, Mineral, Missoula, Payette, Powell, Ravalli, and Sanders Counties, MT; Baker, Clatsop, Columbia, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lane, Linn, Malheur, Morrow, Multnomah, Sherman, Umatilla, Union, Wallowa, Wasco, and Wheeler Counties, OR; and Asotin, Benton, Chelan, Columbia, Clark, Cowlitz, Douglas, Garfield, Grant, Franklin, Kittitas, Klickitat, Okanogan, Pacific, Pend Oreille, Skamania, Wahkiakum, Walla Walla, Whitman, and Yakima Counties, WA, on the maps and as described below.

(2) Critical habitat includes the stream channels within the stream reaches indicated on the maps in this critical habitat designation, and includes a lateral extent from the bankfull elevation on one bank to the bankfull elevation on the opposite bank. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain and is reached at a discharge that generally has a recurrence interval of 1 to 2 years on the annual flood series. If bankfull elevation is not evident on either bank, the ordinary high-water line shall be used to determine the lateral extent of critical habitat. The lateral extent of proposed lakes and reservoirs is defined by the perimeter of the water body as mapped on standard 1:24,000 scale topographic maps.

(3) Within these areas, the PCEs for bull trout are those habitat components that are essential for the primary biological needs of foraging, reproducing, rearing of young, dispersal, genetic exchange, or sheltering. Existing human-constructed features and structures within the critical habitat boundary, such as buildings, powerlines, roads, railroads, urban development, and other paved areas will not contain one or more of the primary constituent elements; consequently, Federal actions limited to those areas would not trigger a consultation under section 7 of the Act unless they affect the species and/or primary constituent elements in adjacent critical habitat. The PCEs are:

(i) Water temperatures ranging from 36 to 59 °F (2 to 15 °C), with adequate thermal refugia available for temperatures at the upper end of this range. Specific temperatures within this range will vary depending on bull trout life history stage and form, geography, elevation, diurnal and seasonal variation, shade, such as that provided by riparian habitat, and local groundwater influence;

(ii) Complex stream channels with features such as woody debris, side channels, pools, and undercut banks to provide a variety of depths, velocities, and instream structures;

(iii) Substrates of sufficient amount, size, and composition to ensure success of egg and embryo overwinter survival, fry emergence, and young-of-the-year and juvenile survival. A minimal amount of fine substrate less than 0.25 in (0.63 cm) in diameter and minimal substrate embeddedness are characteristic of these conditions;

(iv) A natural hydrograph, including peak, high, low, and base flows within historic ranges or, if regulated, a hydrograph that demonstrates the ability to support bull trout populations by minimizing daily and day-to-day fluctuations and minimizing departures from the natural cycle of flow levels corresponding with seasonal variation;

(v) Springs, seeps, groundwater sources, and subsurface water connectivity to contribute to water quality and quantity;

(vi) Migratory corridors with minimal physical, biological, or water quality impediments between spawning, rearing, overwintering, and foraging habitats, including intermittent or seasonal barriers induced by high water temperatures or low flows;

(vii) An abundant food base including terrestrial organisms of riparian origin, aquatic macroinvertebrates, and forage fish;

(viii) Few or no nonnative predatory, interbreeding, or competitive species present; and

(ix) Permanent water of sufficient quantity and quality such that normal reproduction, growth and survival are not inhibited.

(4) Critical habitat does not include non-Federal lands covered by an incidental take permit for the Columbia River population of bull trout issued under section 10(a)(1)(B) of the Act on or before October 6, 2004, as long as such permit, or a conservation easement providing comparable conservation benefits, remains legally operative on such lands.

(5) The following lands have been determined to be essential to the conservation of the Klamath River and Columbia River populations of bull trout, but have been excluded from designated critical habitat pursuant to section 4(b)(2) of the Act:

(i) Non-Federal lands regulated under the Washington Forest Practices Act (RCW Ch. 76.09), as amended by "Engrossed Substitute House Bill 2019'' (1999), and Montana Forested Trust Lands administered by the Montana Department of Natural Resources;

(ii) All stream segments less than 0.5 mi (0.8 km) in length that are under private landownership.

(6) Index map follows:

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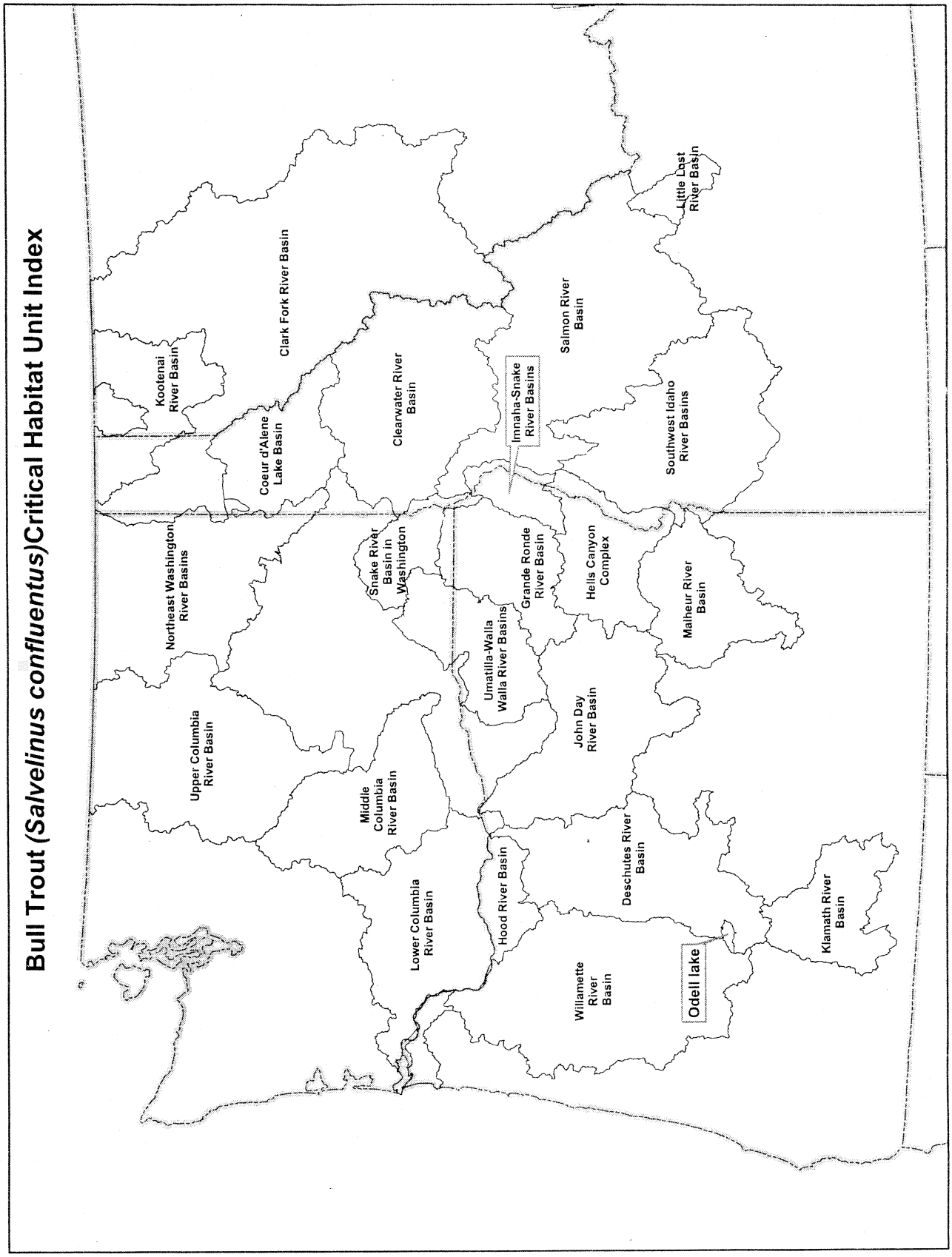

Bull Trout (Salvelinus confluentus) Critical Habitat Unit Index
Kootenai River Basin
Clark Fork River Basin
Coeur d'Alene Lake Basin
Clearwater River Basin
Imnaha-Snake River Basins
Salmon River Basin
Little Lost River Basin
Southwest Idaho River Basins
Northeast Washington River Basins
Snake River Basin in Washington
Grande Ronde River Basin
Hells Canyon Complex
Malheur River Basin
Umatilla-Walla Walla River Basins
John Day River Basin
Upper Columbia River Basin
Middle Columbia River Basin
Lower Columbia River Basin
Hood River Basin
Deschutes River Basin
Klamath River Basin
Willamette River Basin
Odell lake

(7) Unit 1: Klamath River Basin: Critical habitat is designated on the streams listed below, but only for non-federal lands that have greater than ½ mile of river frontage and are located between the associated endpoints for the stream. Lakes are designated in their entirety.

(i) Upper Klamath Lake Subunit.

Designated streams and lakes	Stream endpoint latitude	Stream endpoint longitude	Stream endpoint or lake center latitude	Stream endpoint or lake center longitude
Sun Creek	42.898	−122.096	42.735	−122.008
Agency Lake	Located at		42.541	−121.963

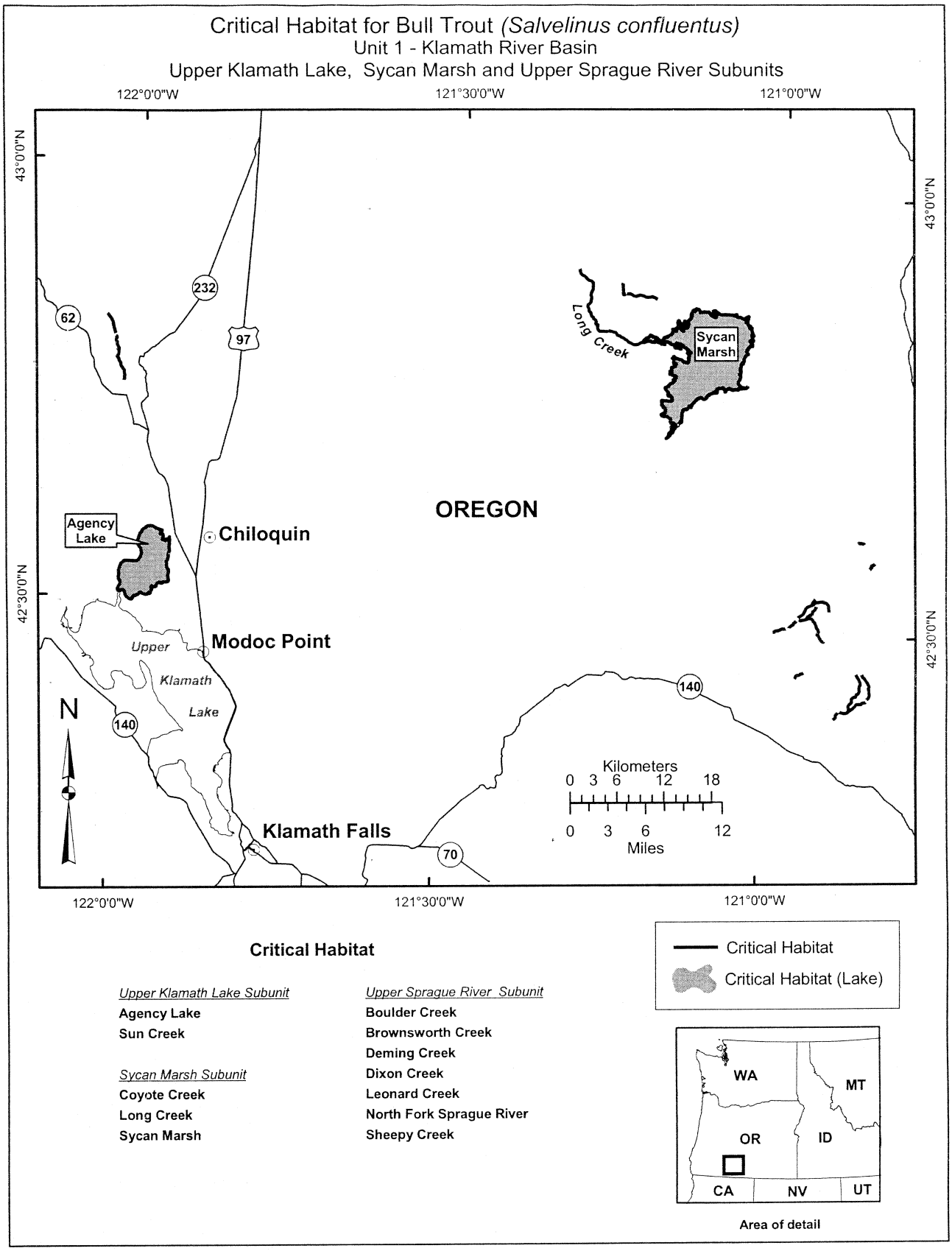
(ii) Sycan Marsh Subunit.

Designated streams and lakes	Stream endpoint latitude	Stream endpoint longitude	Streams endpoint or lake center latitude	Stream endpoint or lake center longitude
Coyote Creek	42.893	−121.246	42.854	−121.158
Long Creek	42.933	−121.338	42.826	−121.209
Sycan Marsh	Located at		42.811	−121.113

(iii) Upper Sprague River Subunit.

Designated streams and lakes	Stream endpoint latitude	Stream endpoint longitude	Stream endpoint latitude	Stream endpoint longitude
Boulder Creek	42.495	−120.884	42.517	−120.951
Brownsworth Creek	42.469	−120.854	42.392	−120.913
Deming Creek	42.486	−120.885	42.448	−120.953
Dixon Creek	42.532	−120.923	42.518	−120.937
Leonard Creek	42.465	−120.864	42.413	−120.867
North Fork Sprague River	42.557	−120.839	42.497	−121.008
Sheepy Creek	42.514	−120.890	42.534	−120.931

(iv) **Note:** Map of the Klamath River Basin follows:


Critical Habitat for Bull Trout (Salvelinus confluentus)
Unit 1 - Klamath River Basin
Upper Klamath Lake, Sycan Marsh and Upper Sprague River Subunits
122°0'0"W
121°30'0"W
121°0'0"W
43°0'0"N
42°30'0"N
232
62
97
140
70
Long Creek
Sycan Marsh
OREGON
Agency Lake
Chiloquin
Modoc Point
Upper Klamath Lake
N
Kilometers
0 3 6 12 18
0 3 6 12
Miles
Klamath Falls
Critical Habitat
Critical Habitat (Lake)
Upper Klamath Lake Subunit
Agency Lake
Sun Creek
Sycan Marsh Subunit
Coyote Creek
Long Creek
Sycan Marsh
Upper Sprague River Subunit
Boulder Creek
Brownsworth Creek
Deming Creek
Dixon Creek
Leonard Creek
North Fork Sprague River
Sheepy Creek
WA
MT
OR
ID
CA
NV
UT
Area of detail

(8) Unit 2: Clark Fork River Basin: Critical habitat is designated on the streams listed below, but only for non-federal lands that have greater than ½ mile of river frontage and are located between the associated endpoints for the stream.

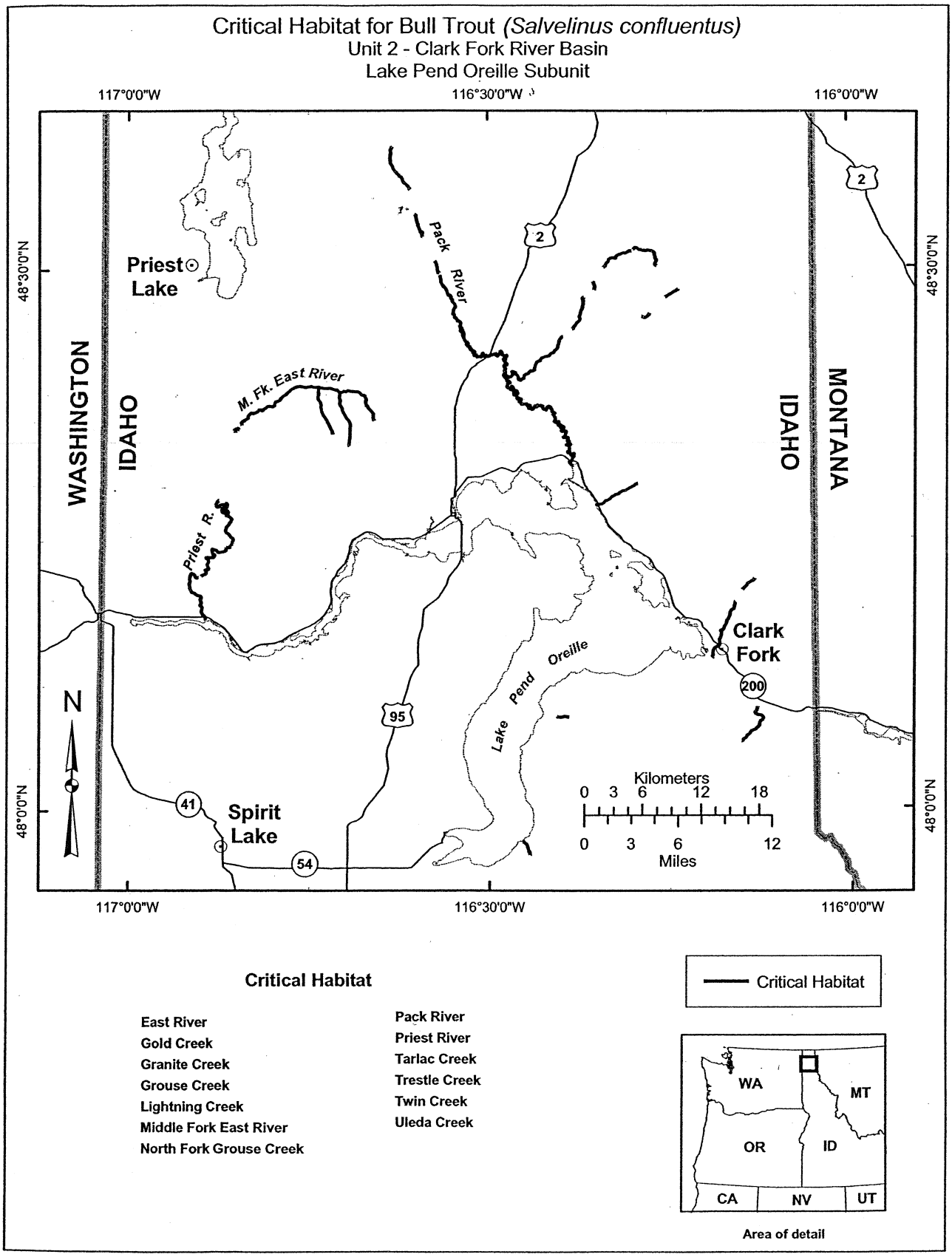
(i) Lake Pend Oreille Subunit.

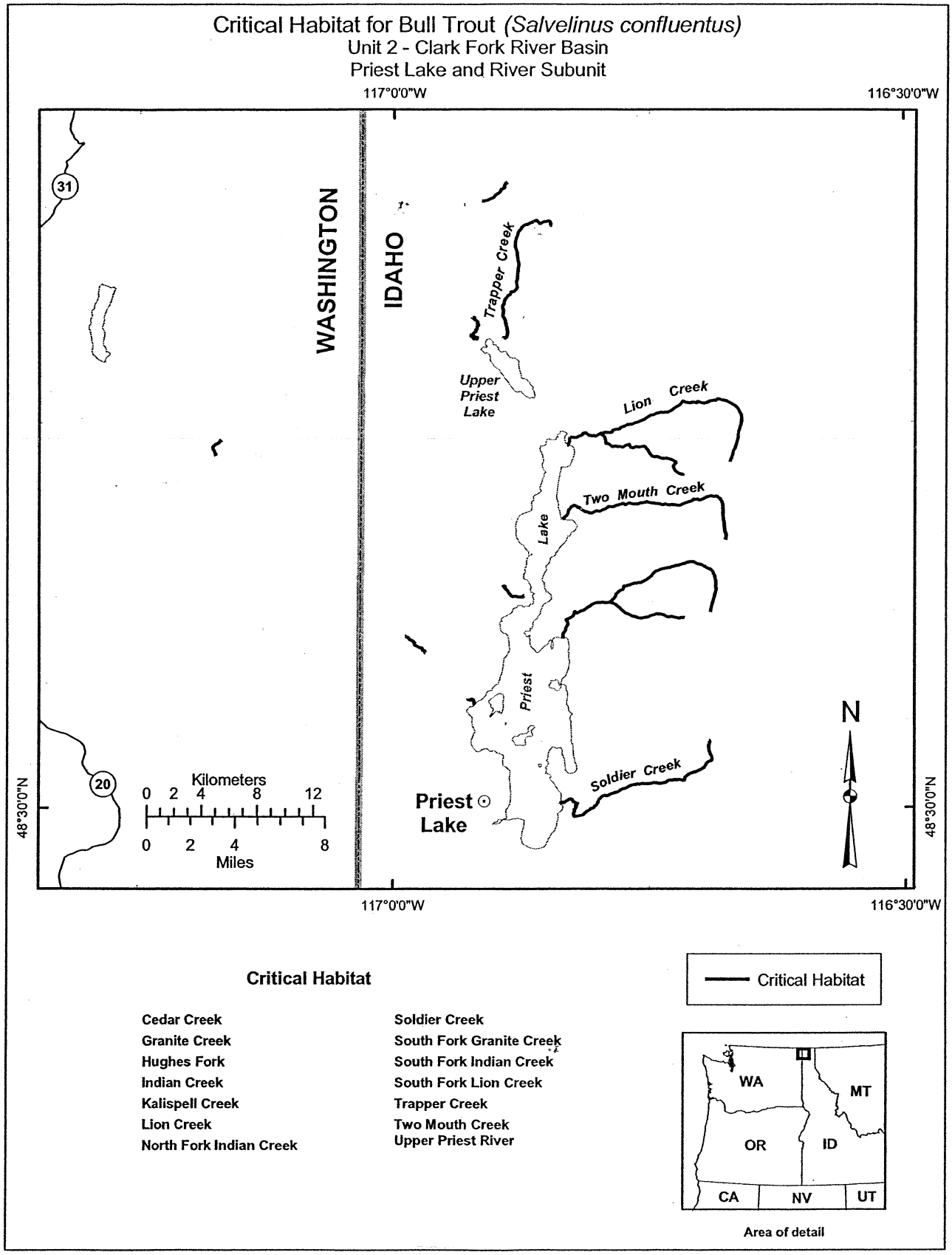
Designated streams and lakes	Stream endpoint latitude	Stream endpoint longitude	Stream endpoint latitude	Stream endpoint longitude
East River	48.371	−116.819	48.353	−116.852
Gold Creek	47.954	−116.451	47.971	−116.454
Granite Creek	48.060	−116.329	48.087	−116.427
Grouse Creek	48.483	−116.228	48.403	−116.477
Lightning Creek	48.353	−116.175	48.140	−116.191
Middle Fork East River	48.362	−116.659	48.371	−116.819
North Fork Grouse Creek	48.502	−116.265	48.452	−116.373
Pack River	48.613	−116.634	48.320	−116.382
Priest River	48.353	−116.852	48.178	−116.892
Tarlac Creek	48.349	−116.717	48.393	−116.737
Trestle Creek	48.352	−116.234	48.283	−116.352
Twin Creek	48.063	−116.151	48.094	−116.129
Uleda Creek	48.339	−116.694	48.388	−116.707

(ii) Priest Lakes and River Subunit.

Designated streams and lakes	Stream endpoint latitude	Stream endpoint longitude	Stream endpoint latitude	Stream endpoint longitude
Cedar Creek	48.909	−116.885	48.880	−116.959
Granite Creek	48.700	−117.029	48.639	−116.863
Hughes Fork	48.946	−117.023	48.805	−116.923
Indian Creek	48.634	−116.789	48.610	−116.836
Kalispell Creek	48.626	−117.134	48.567	−116.921
Lion Creek	48.725	−116.672	48.736	−116.831
North Fork Indian Creek	48.627	−116.691	48.634	−116.789
Soldier Creek	48.547	−116.698	48.503	−116.838
South Fork Granite Creek	48.761	−117.147	48.700	−117.029
South Fork Indian Creek	48.624	−116.716	48.634	−116.789
South Fork Lion Creek	48.716	−116.718	48.743	−116.797
Trapper Creek	48.877	−116.846	48.796	−116.896
Two Mouth Creek	48.674	−116.676	48.688	−116.836
Upper Priest River	49.000	−116.936	48.799	−116.911

(iii) **Note:** Maps of the Lake Pend Oreille Subunit and the Priest Lakes and River Subunit of the Clark Fork River Basin follow:

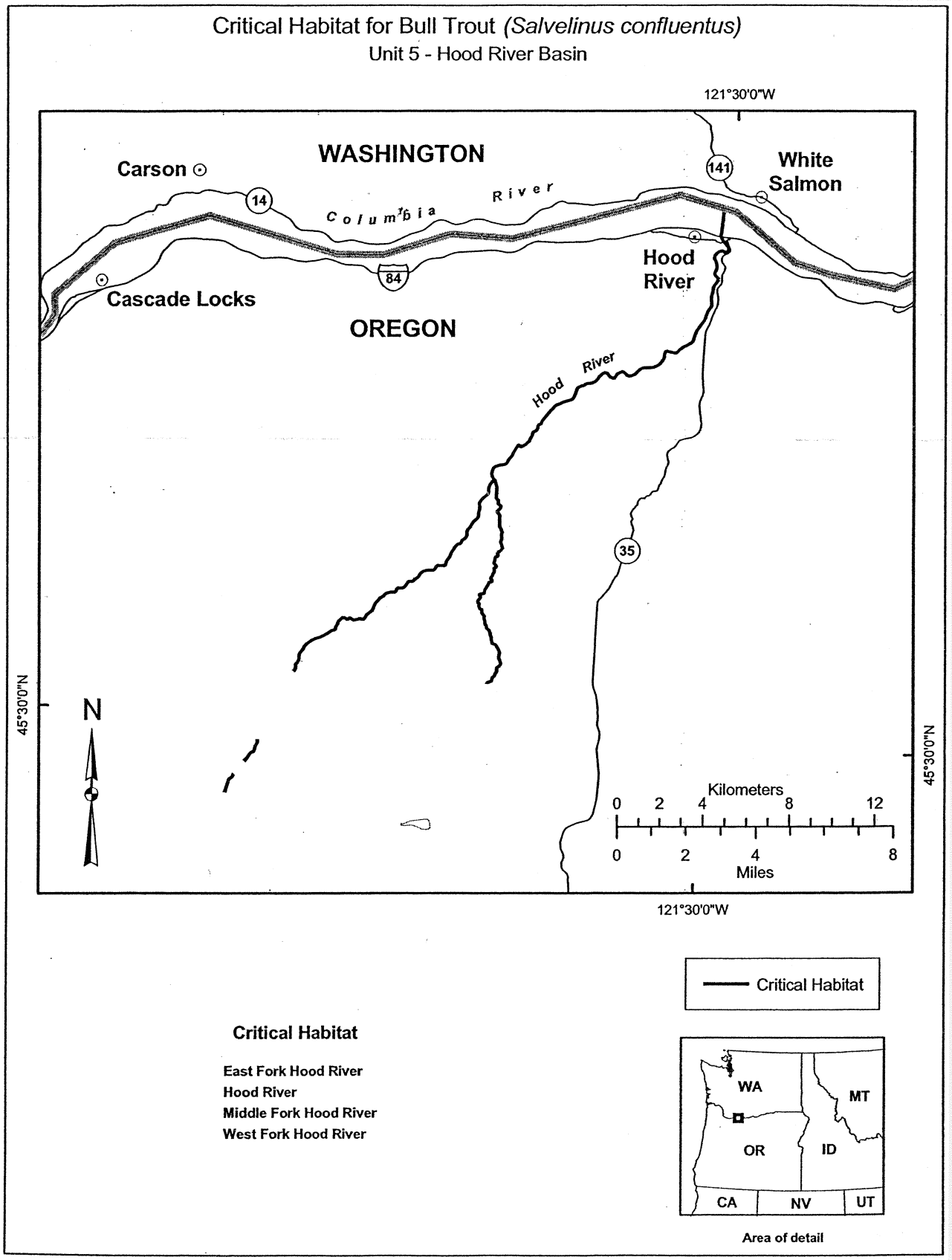

Critical Habitat for Bull Trout (Salvelinus confluentus)
Unit 2 - Clark Fork River Basin
Lake Pend Oreille Subunit
117°0'0"W
116°30'0"W
116°0'0"W
48°30'0"N
48°0'0"N
Priest Lake
Pack River
M. Fk. East River
Priest R.
WASHINGTON
IDAHO
IDAHO
MONTANA
Clark Fork
Lake Pend Oreille
Spirit Lake
N
Kilometers
0 3 6 12 18
0 3 6 12
Miles
Critical Habitat
East River
Gold Creek
Granite Creek
Grouse Creek
Lightning Creek
Middle Fork East River
North Fork Grouse Creek
Pack River
Priest River
Tarlac Creek
Trestle Creek
Twin Creek
Uleda Creek
Critical Habitat
WA
MT
OR
ID
CA
NV
UT
Area of detail


Critical Habitat for Bull Trout (Salvelinus confluentus)
Unit 2 - Clark Fork River Basin
Priest Lake and River Subunit
117°0'0"W
116°30'0"W
48°30'0"N
WASHINGTON
IDAHO
31
20
Trapper Creek
Upper Priest Lake
Lion Creek
Two Mouth Creek
Priest Lake
Soldier Creek
Priest Lake
N
Kilometers
0 2 4 8 12
0 2 4 8
Miles
Critical Habitat
Cedar Creek
Granite Creek
Hughes Fork
Indian Creek
Kalispell Creek
Lion Creek
North Fork Indian Creek
Soldier Creek
South Fork Granite Creek
South Fork Indian Creek
South Fork Lion Creek
Trapper Creek
Two Mouth Creek
Upper Priest River
Critical Habitat
WA
MT
OR
ID
CA
NV
UT
Area of detail

(9) Unit 5: Hood River Basin: Critical habitat is designated on the streams listed below, but only for non-federal lands that have greater than ½ mile of river frontage and are located between the associated endpoints for the stream.

Designated streams and lakes	Stream endpoint latitude	Stream endpoint longitude	Stream endpoint latitude	Stream endpoint longitude
East Fork Hood River	45.575	−121.626	45.605	−121.632
Hood River	45.605	−121.632	45.721	−121.506
Middle Fork Hood River	45.463	−121.645	45.575	−121.626
West Fork Hood River	45.456	−121.781	45.605	−121.632

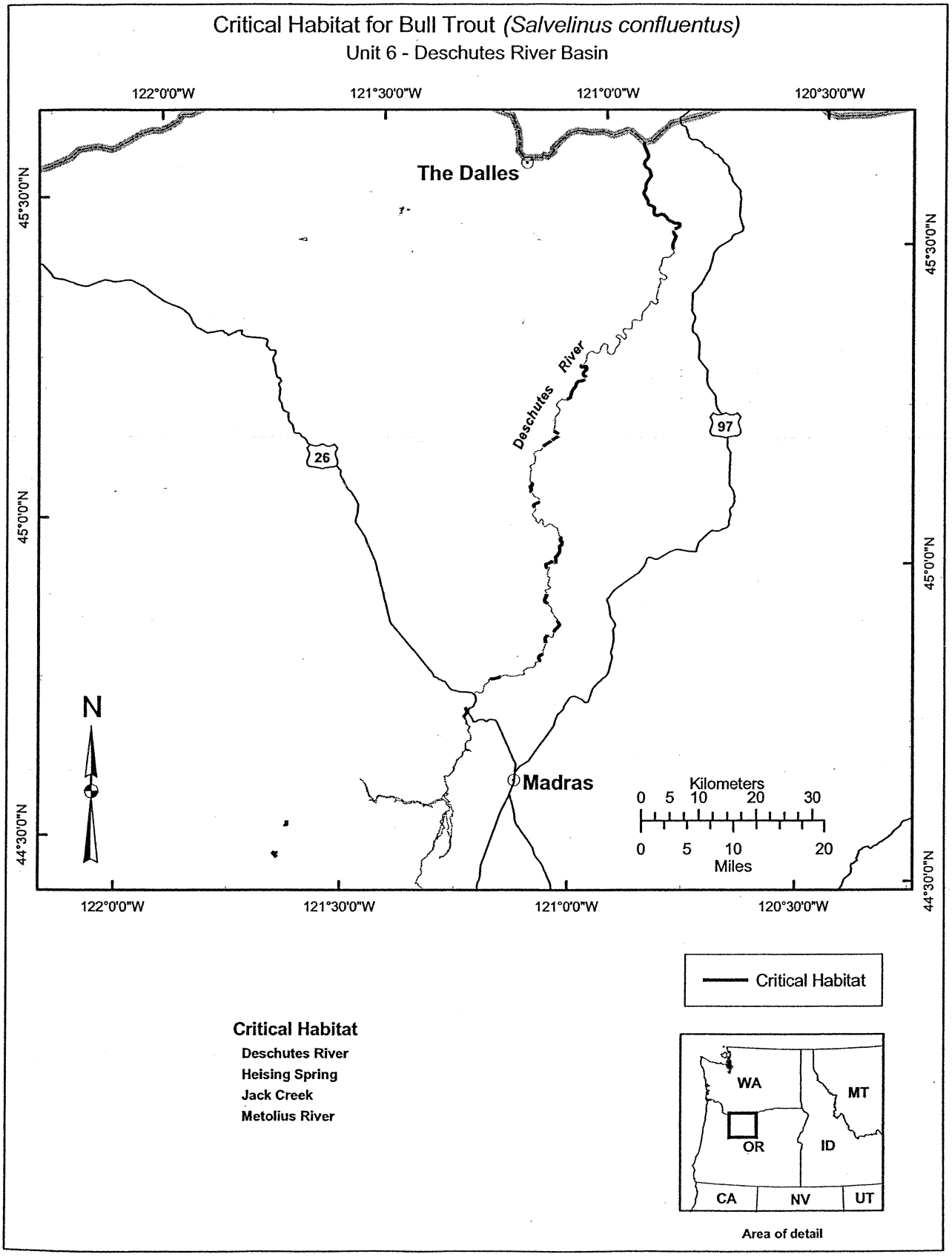
(i) **Note:** Map of the Hood River Basin follows:


Critical Habitat for Bull Trout (Salvelinus confluentus)
Unit 5 - Hood River Basin
121°30'0"W
WASHINGTON
Carson
White Salmon
Columbia River
Hood River
Cascade Locks
OREGON
Hood River
45°30'0"N
N
Kilometers
0 2 4 8 12
0 2 4 8
Miles
Critical Habitat
Critical Habitat
East Fork Hood River
Hood River
Middle Fork Hood River
West Fork Hood River
WA
MT
OR
ID
CA
NV
UT
Area of detail

(10) Unit 6: Deschutes River Basin: Critical habitat is designated on the streams listed below, but only for non-federal lands that have greater than ½ mile of river frontage and are located between the associated endpoints for the stream.

Designated streams and lakes	Stream endpoint latitude	Stream endpoint longitude	Stream endpoint latitude	Stream endpoint longitude
Deschutes River	44.373	−121.291	45.639	−120.914
Heising Spring	44.491	−121.651	44.494	−121.648
Jack Creek	44.472	−121.725	44.493	−121.647
Metolius River	44.434	−121.637	44.577	−121.619

(i) **Note:** Map of the Deschutes River Basin follows:


Critical Habitat for Bull Trout (Salvelinus confluentus)
Unit 6 - Deschutes River Basin
122°0'0"W
121°30'0"W
121°0'0"W
120°30'0"W
45°30'0"N
45°0'0"N
44°30'0"N
The Dalles
Deschutes River
26
97
Madras
N
Kilometers
0 5 10 20 30
0 5 10 20
Miles
Critical Habitat
Critical Habitat
Deschutes River
Heising Spring
Jack Creek
Metolius River
WA
MT
OR
ID
CA
NV
UT
Area of detail

(11) Unit 9: Umatilla-Walla Walla River Basins: Critical habitat is designated on the streams listed below, but only for non-federal lands that have greater than ½ mile of river frontage and are located between the associated endpoints for the stream.

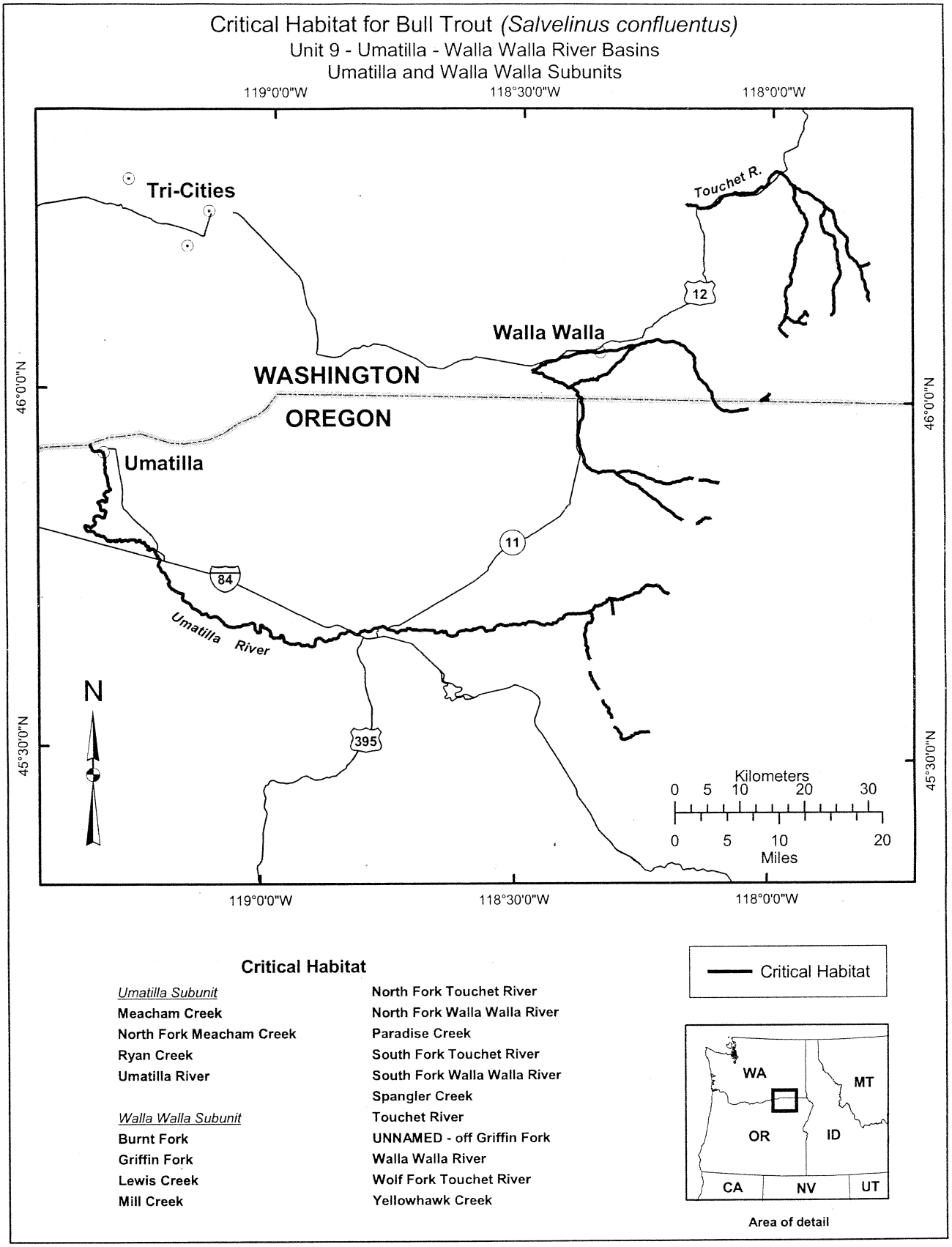
(i) Umatilla Subunit.

Designated streams and lakes	Stream endpoint latitude	Stream endpoint longitude	Stream endpoint latitude	Stream endpoint longitude
Meacham Creek	45.527	−118.290	45.702	−118.359
North Fork Meacham Creek	45.575	−118.174	45.527	−118.290
Ryan Creek	45.694	−118.308	45.723	−118.314
Umatilla River	45.726	−118.187	45.923	−119.356

(ii) Walla Walla Subunit.

Designated streams and lakes	Stream endpoint latitude	Stream endpoint longitude	Stream endpoint latitude	Stream endpoint longitude
Burnt Fork	46.087	−117.940	46.105	−117.985
Griffin Fork	46.099	−117.913	46.121	−117.973
Lewis Creek	46.156	−117.771	46.191	−117.824
Mill Creek	46.011	−117.941	46.039	−118.478
North Fork Touchet River	46.093	−117.864	46.302	−117.959
North Fork Walla Walla River	45.947	−117.990	45.899	−118.307
Paradise Creek	46.001	−117.990	46.004	−118.017
South Fork Touchet River	46.105	−117.985	46.302	−117.959
South Fork Walla Walla River	45.966	−117.963	45.899	−118.307
Spangler Creek	46.099	−117.802	46.149	−117.806
Touchet River	46.302	−117.959	46.272	−118.174
UNNAMED—off Griffin Fork	46.120	−117.922	46.113	−117.948
Walla Walla River	45.899	−118.307	46.039	−118.478
Wolf Fork Touchet River	46.075	−117.903	46.274	−117.895
Yellowhawk Creek	46.077	−118.272	46.017	−118.400

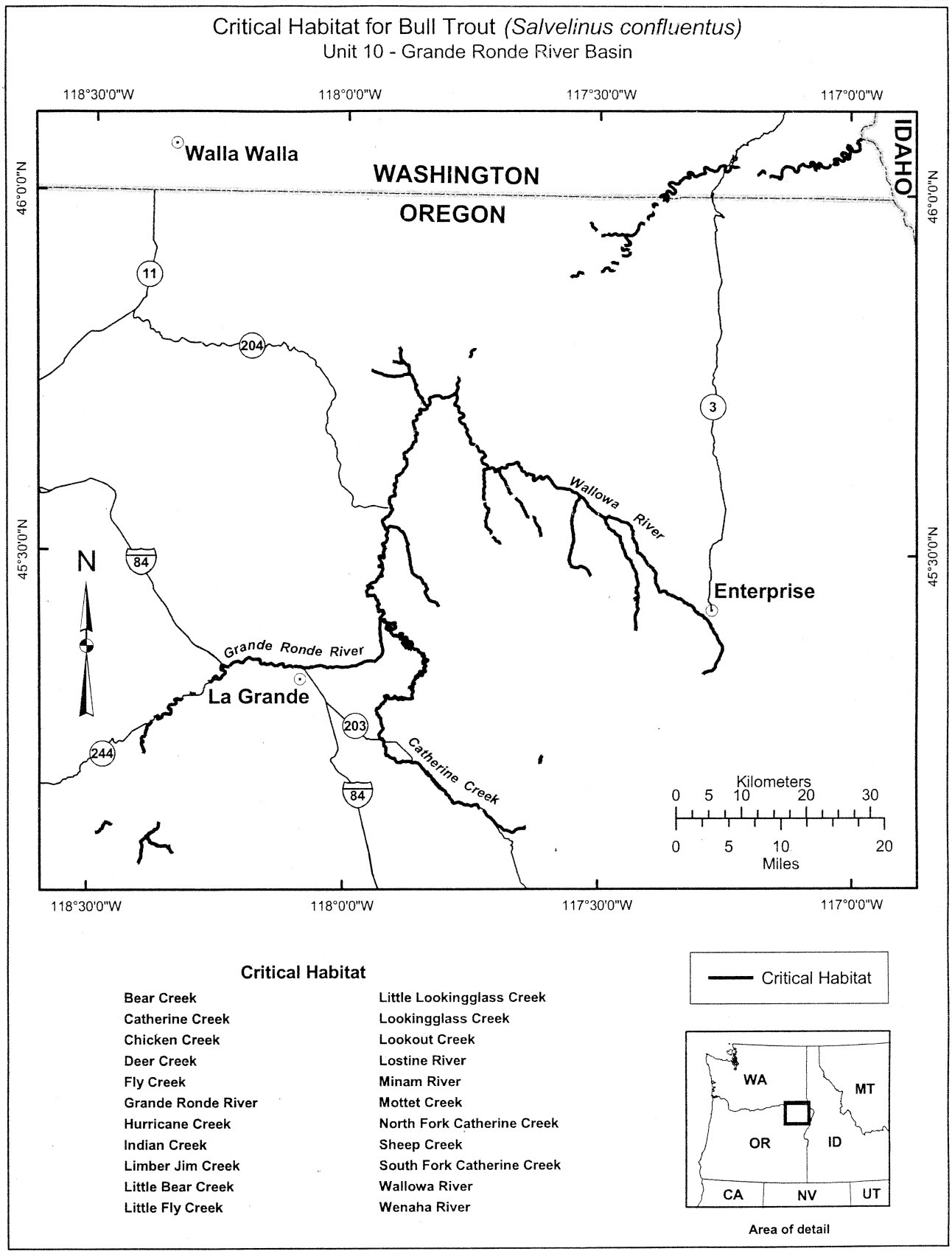
(iii) **Note:** Map of the Umatilla-Walla Walla River Basins follows:


Critical Habitat for Bull Trout (Salvelinus confluentus)
Unit 9 - Umatilla - Walla Walla River Basins
Umatilla and Walla Walla Subunits
119°0'0"W
118°30'0"W
118°0'0"W
46°0'0"N
45°30'0"N
Tri-Cities
Touchet R.
12
Walla Walla
WASHINGTON
OREGON
Umatilla
11
84
Umatilla River
395
N
Kilometers
0 5 10 20 30
0 5 10 20
Miles
Critical Habitat
Critical Habitat
Umatilla Subunit
Meacham Creek
North Fork Meacham Creek
Ryan Creek
Umatilla River
Walla Walla Subunit
Burnt Fork
Griffin Fork
Lewis Creek
Mill Creek
North Fork Touchet River
North Fork Walla Walla River
Paradise Creek
South Fork Touchet River
South Fork Walla Walla River
Spangler Creek
Touchet River
UNNAMED - off Griffin Fork
Walla Walla River
Wolf Fork Touchet River
Yellowhawk Creek
WA
MT
OR
ID
CA
NV
UT
Area of detail

(12) Unit 10: Grande Ronde River Basin: Critical habitat is designated on the streams listed below, but only for non-federal lands that have greater than ½ mile of river frontage and are located between the associated endpoints for the stream.

Designated streams and lakes	Stream endpoint latitude	Stream endpoint longitude	Stream endpoint latitude	Stream endpoint longitude
Bear Creek	45.323	−117.480	45.584	−117.540
Catherine Creek	45.120	−117.646	45.408	−117.930
Chicken Creek	45.024	−118.385	45.095	−118.394
Deer Creek	45.423	−117.587	45.620	−117.699
Fly Creek	45.121	−118.465	45.210	−118.394
Grande Ronde River	44.967	−118.254	46.080	−116.978
Hurricane Creek	45.274	−117.310	45.420	−117.301
Indian Creek	45.337	−117.721	45.534	−117.919
Limber Jim Creek	45.085	−118.229	45.089	−118.343
Little Bear Creek	45.428	−117.479	45.485	−117.554
Little Fly Creek	45.110	−118.475	45.121	−118.465
Little Lookingglass Creek	45.817	−117.901	45.750	−117.874
Lookingglass Creek	45.779	−118.078	45.707	−117.841
Lookout Creek	45.078	−118.540	45.110	−118.475
Lostine River	45.246	−117.374	45.552	−117.489
Minam River	45.148	−117.371	45.621	−117.720
Mottet Creek	45.788	−117.942	45.767	−117.886
North Fork Catherine Creek	45.225	−117.604	45.120	−117.646
Sheep Creek	45.016	−118.507	45.105	−118.381
South Fork Catherine Creek	45.112	−117.513	45.120	−117.646
Wallowa River	45.420	−117.301	45.726	−117.784
Wenaha River	45.951	−117.794	45.946	−117.450

(i) **Note:** Map of the Grande Ronde River Basin follows:


Critical Habitat for Bull Trout (Salvelinus confluentus)
Unit 10 - Grande Ronde River Basin
118°30'0"W
118°0'0"W
117°30'0"W
117°0'0"W
46°0'0"N
45°30'0"N
Walla Walla
WASHINGTON
OREGON
IDAHO
11
204
3
84
244
203
Wallowa River
Enterprise
Grande Ronde River
La Grande
Catherine Creek
N
Kilometers
0 5 10 20 30
0 5 10 20
Miles
Critical Habitat
Bear Creek
Catherine Creek
Chicken Creek
Deer Creek
Fly Creek
Grande Ronde River
Hurricane Creek
Indian Creek
Limber Jim Creek
Little Bear Creek
Little Fly Creek
Little Lookingglass Creek
Lookingglass Creek
Lookout Creek
Lostine River
Minam River
Mottet Creek
North Fork Catherine Creek
Sheep Creek
South Fork Catherine Creek
Wallowa River
Wenaha River
Critical Habitat
WA
MT
OR
ID
CA
NV
UT
Area of detail

(13) Unit 11: Imnaha-Snake River Basins: Critical habitat is designated on the streams listed below, but only for non-federal lands that have greater than ½ mile of river frontage and are located between the associated endpoints for the stream.

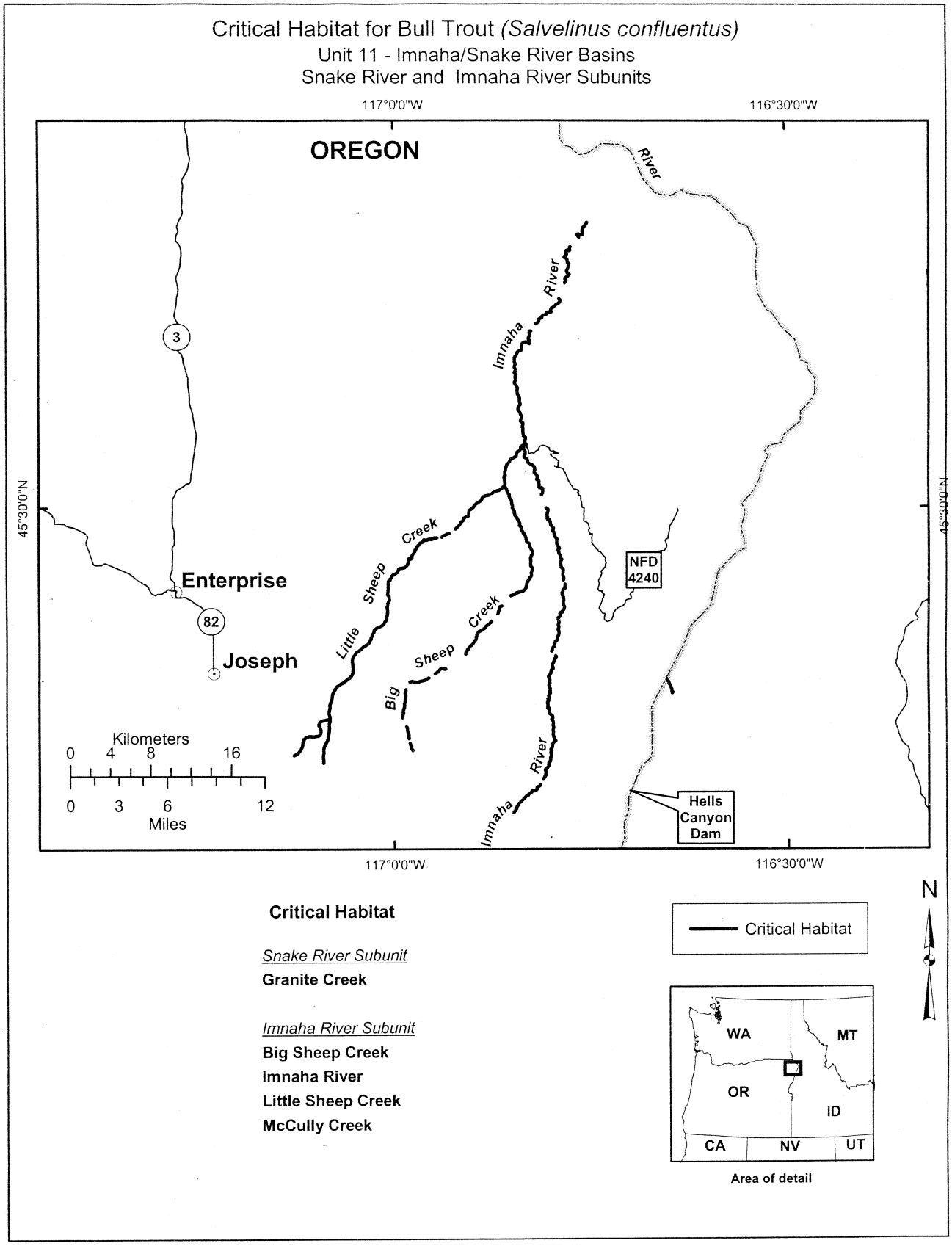
(i) Snake River Subunit.

Designated streams and lakes	Stream endpoint latitude	Stream endpoint longitude	Stream endpoint latitude	Stream endpoint longitude
Granite Creek	45.263	−116.611	45.349	−116.654

(ii) Imnaha River Subunit.

Designated streams and lakes	Stream endpoint latitude	Stream endpoint longitude	Stream endpoint latitude	Stream endpoint longitude
Big Sheep Creek	45.178	−117.119	45.557	−116.834
Imnaha River	45.113	−117.125	45.817	−116.764
Little Sheep Creek	45.232	−117.093	45.520	−116.859
McCully Creek	45.211	−117.140	45.311	−117.082

(iii) **Note:** Map of the Imnaha-Snake River Basins follows:


Critical Habitat for Bull Trout (Salvelinus confluentus)
Unit 11 - Imnaha/Snake River Basins
Snake River and Imnaha River Subunits
117°0'0"W
116°30'0"W
OREGON
River
Imnaha River
3
45°30'0"N
Enterprise
82
Joseph
Little Sheep Creek
Big Sheep Creek
NFD 4240
Imnaha River
Hells Canyon Dam
Kilometers
0 4 8 16
0 3 6 12
Miles
Critical Habitat
Snake River Subunit
Granite Creek
Imnaha River Subunit
Big Sheep Creek
Imnaha River
Little Sheep Creek
McCully Creek
Critical Habitat
N
WA
MT
OR
ID
CA
NV
UT
Area of detail

(14) Unit 12: Hells Canyon Complex: Critical habitat is designated on the streams listed below, but only for non-federal lands that have greater than ½ mile of river frontage and are located between the associated endpoints for the stream.

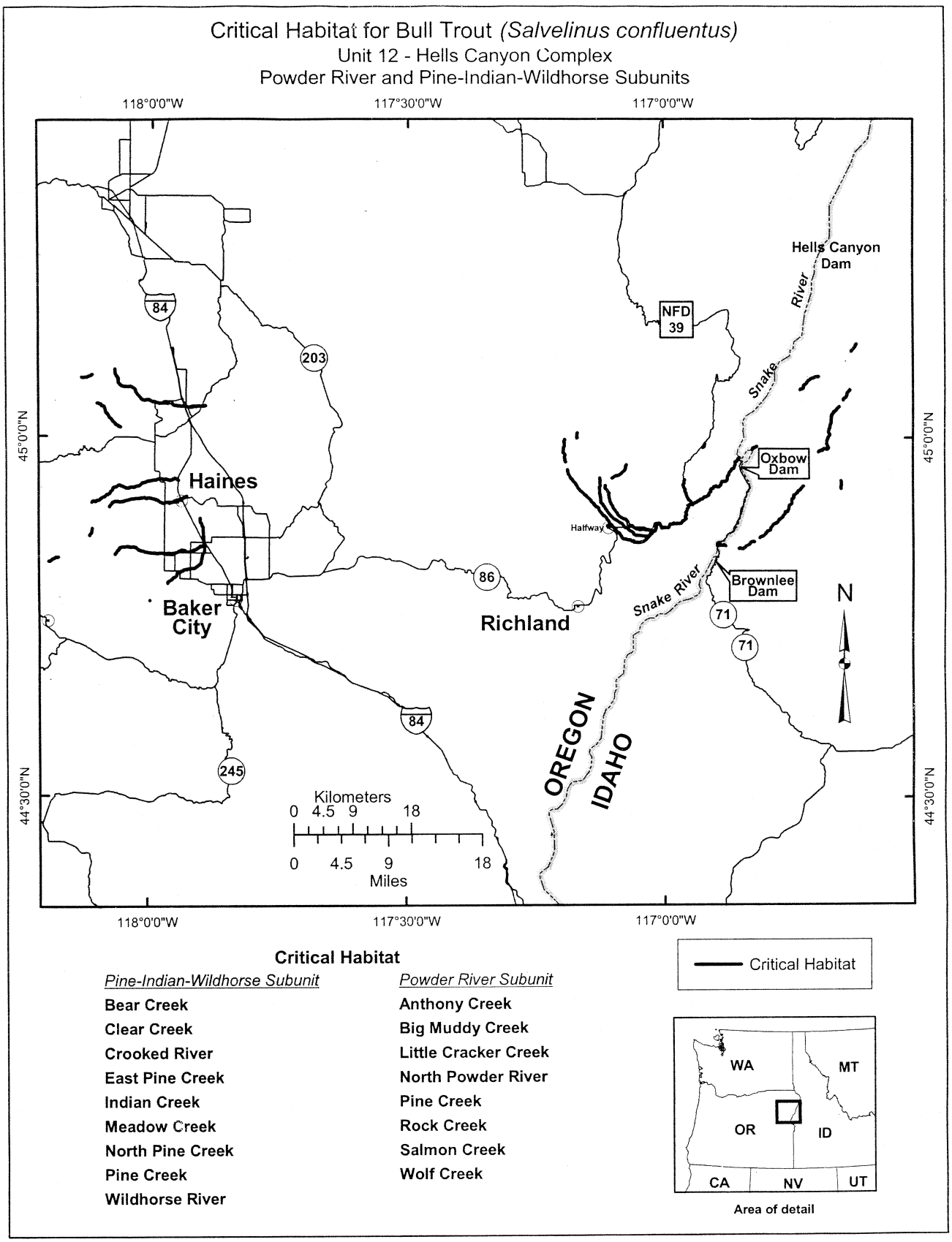
(i) Pine-Indian-Wildhorse Subunit.

Designated streams and lakes	Stream endpoint latitude	Stream endpoint longitude	Stream endpoint latitude	Stream endpoint longitude
Bear Creek	45.136	−116.524	44.959	−116.724
Clear Creek	45.043	−117.143	44.866	−117.029
Crooked River	44.817	−116.742	44.959	−116.724
East Pine Creek	45.046	−117.119	44.872	−117.020
Indian Creek	45.150	−116.590	44.985	−116.828
Meadow Creek	45.017	−117.171	44.990	−117.142
North Pine Creek	45.079	−116.897	44.910	−116.948
Pine Creek	45.039	−117.215	44.974	−116.853
Wildhorse River	44.959	−116.724	44.851	−116.896

(ii) Powder River Subunit.

Designated streams and lakes	Stream endpoint latitude	Stream endpoint longitude	Stream endpoint latitude	Stream endpoint longitude
Anthony Creek	44.953	−118.220	45.013	−118.059
Big Muddy Creek	44.899	−118.131	44.940	−117.945
Little Cracker Creek	44.840	−118.166	44.826	−118.196
Pine Creek	44.826	−118.078	44.849	−117.893
Rock Creek	44.856	−118.124	44.918	−117.929
Salmon Creek	44.767	−118.019	44.888	−117.902
Wolf Creek	45.068	−118.193	45.044	−117.893

(iii) **Note:** Map of the Hells Canyon Complex follows:


Critical Habitat for Bull Trout (Salvelinus confluentus)
Unit 12 - Hells Canyon Complex
Powder River and Pine-Indian-Wildhorse Subunits
118°0'0"W
117°30'0"W
117°0'0"W
45°0'0"N
44°30'0"N
Hells Canyon Dam
Snake River
NFD 39
Oxbow Dam
Brownlee Dam
Halfway
Haines
Baker City
Richland
Snake River
OREGON
IDAHO
84
203
86
71
245
N
Kilometers
0 4.5 9 18
0 4.5 9 18
Miles
Critical Habitat
Pine-Indian-Wildhorse Subunit
Bear Creek
Clear Creek
Crooked River
East Pine Creek
Indian Creek
Meadow Creek
North Pine Creek
Pine Creek
Wildhorse River
Powder River Subunit
Anthony Creek
Big Muddy Creek
Little Cracker Creek
North Powder River
Pine Creek
Rock Creek
Salmon Creek
Wolf Creek
Critical Habitat
WA
MT
OR
ID
CA
NV
UT
Area of detail

(15) Unit 14: Coeur d'Alene Lake Basin: Critical habitat is designated on the streams listed below, but only for non-federal lands that have greater than ½ mile of river frontage and are located between the associated endpoints for the stream. Lakes are designated in their entirety.

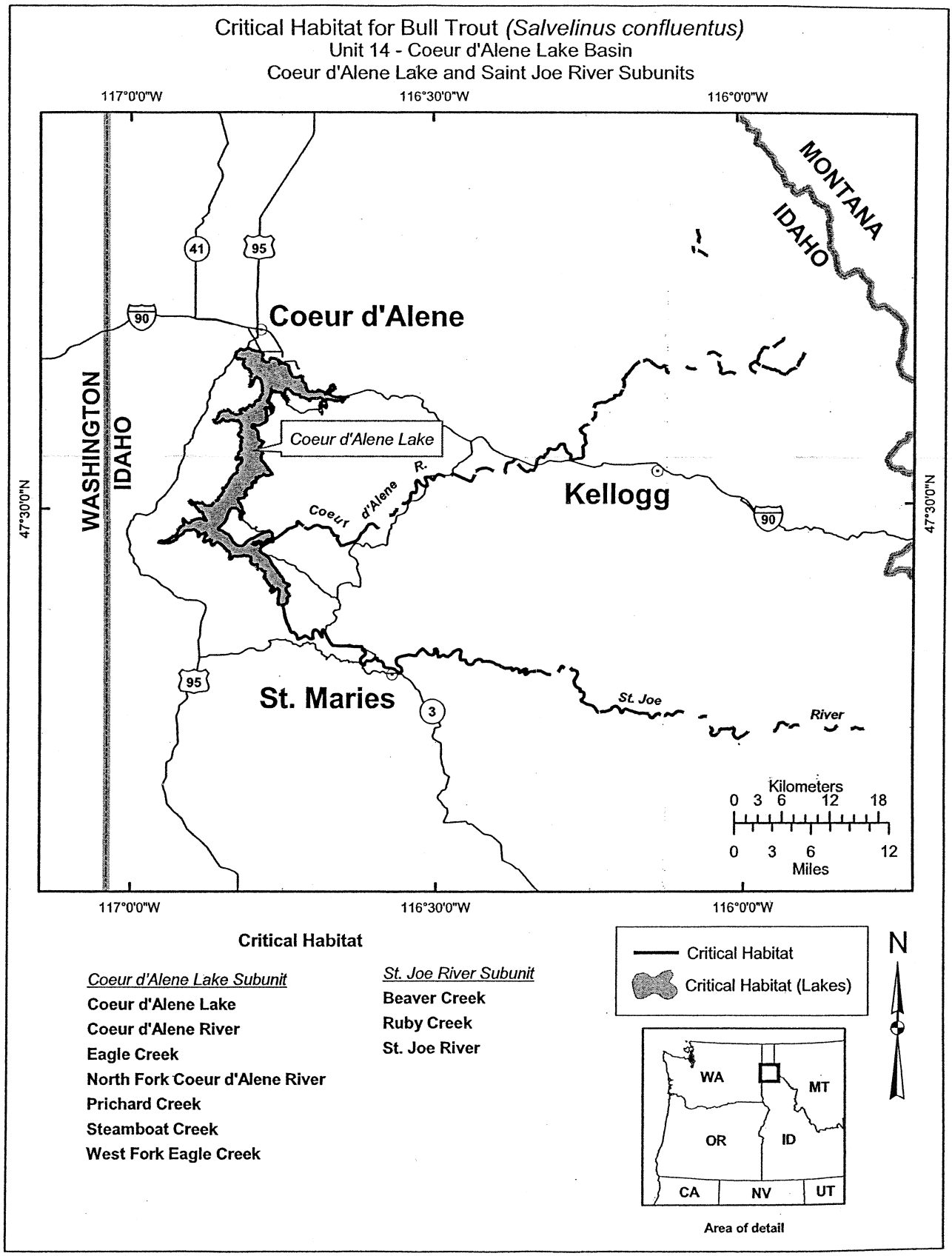
(i) Coeur d'Alene Lake Subunit.

Designated stream and lakes	Stream endpoint latitude	Stream endpoint longitude	Stream endpoint or lake center latitude	Stream endpoint or lake center longitude
Coeur d'Alene Lake	Located at		47.548	−116.802
Coeur d'Alene River	47.558	−116.257	47.460	−116.798
Eagle Creek	47.652	−115.903	47.644	−115.921
North Fork Coeur d'Alene River	48.006	−116.321	47.558	−116.257
Prichard Creek	47.644	−115.921	47.658	−115.976
Steamboat Creek	47.716	−116.199	47.662	−116.154
West Fork Eagle Creek	47.750	−115.803	47.652	−115.903

(ii) St. Joe River Subunit.

Designated Streams and Lakes	Stream endpoint latitude	Stream endpoint longitude	Stream endpoint latitude	Stream endpoint longitude
Beaver Creek	47.064	−115.480	47.083	−115.355
Ruby Creek	46.961	−115.430	46.983	−115.367
St. Joe River	47.017	−115.078	47.393	−116.749

(iii) **Note:** Map of the Coeur d'Alene Lake Basin follows:


Critical Habitat for Bull Trout (Salvelinus confluentus)
Unit 14 - Coeur d'Alene Lake Basin
Coeur d'Alene Lake and Saint Joe River Subunits
117°0'0"W
116°30'0"W
116°0'0"W
47°30'0"N
MONTANA
IDAHO
WASHINGTON
IDAHO
Coeur d'Alene
Coeur d'Alene Lake
Coeur d'Alene R.
Kellogg
St. Maries
St. Joe River
41
95
90
3
Kilometers
0 3 6 12 18
0 3 6 12
Miles
Critical Habitat
Coeur d'Alene Lake Subunit
Coeur d'Alene Lake
Coeur d'Alene River
Eagle Creek
North Fork Coeur d'Alene River
Prichard Creek
Steamboat Creek
West Fork Eagle Creek
St. Joe River Subunit
Beaver Creek
Ruby Creek
St. Joe River
Critical Habitat
Critical Habitat (Lakes)
N
WA
MT
OR
ID
CA
NV
UT
Area of detail

(16) Unit 19: Lower Columbia River Basin: Critical habitat is designated on the streams listed below, but only for non-federal lands that have greater than ½ mile of river frontage and are located between the associated endpoints for the stream.

(i) Lewis River Subunit.

Designated streams and lakes	Stream endpoint latitude	Stream endpoint longitude	Stream endpoint latitude	Stream endpoint longitude
Lewis River (Lower)	45.957	−122.555	45.850	−122.782
Lewis River (Upper)	46.154	−121.882	46.066	−122.019
Pine Creek	46.142	−122.095	46.071	−122.016
UNNAMED—off Swift Creek Reservoir	46.030	−122.024	46.043	−122.038
UNNAMED 1—off Pine Creek	46.099	−122.068	46.092	−122.058

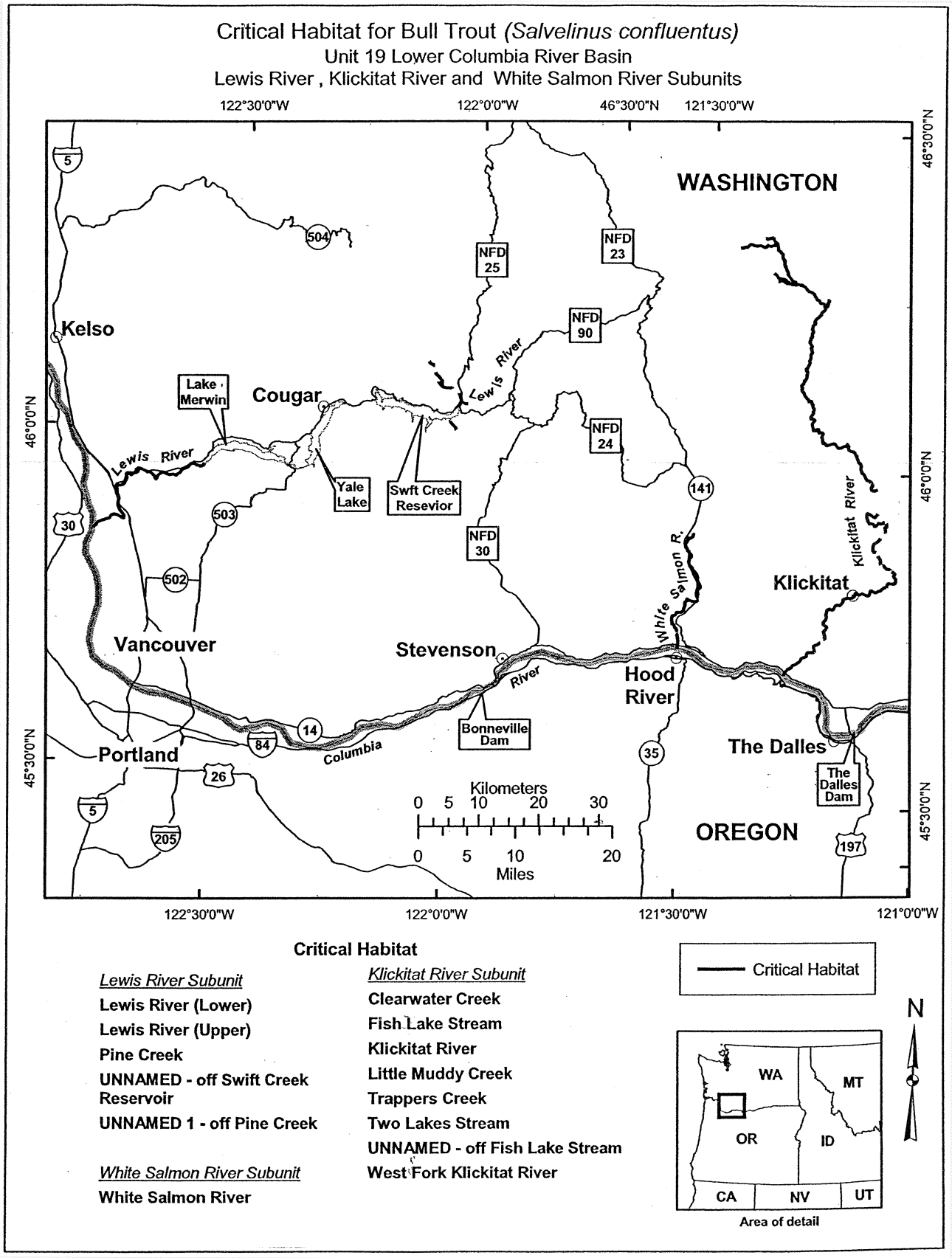
(ii) White Salmon River Subunit.

Designated streams and lakes	Stream endpoint latitude	Stream endpoint longitude	Stream endpoint latitude	Stream endpoint longitude
White Salmon River	45.897	−121.503	45.723	−121.521

(iii) Klickitat River Subunit.

Designated streams and lakes	Stream endpoint latitude	Stream endpoint longitude	Stream endpoint latitude	Stream endpoint longitude
Clearwater Creek	46.278	−121.330	46.276	−121.327
Fish Lake Stream	46.342	−121.368	46.275	−121.312
Klickitat River	46.255	−121.239	45.691	−121.293
Little Muddy Creek	46.278	−121.352	46.275	−121.312
Trappers Creek	46.290	−121.362	46.275	−121.330
Two Lakes Stream	46.340	−121.384	46.342	−121.368
UNNAMED—off Fish Lake Stream	46.323	−121.437	46.331	−121.359
West Fork Klickitat River	46.275	−121.312	46.242	−121.246

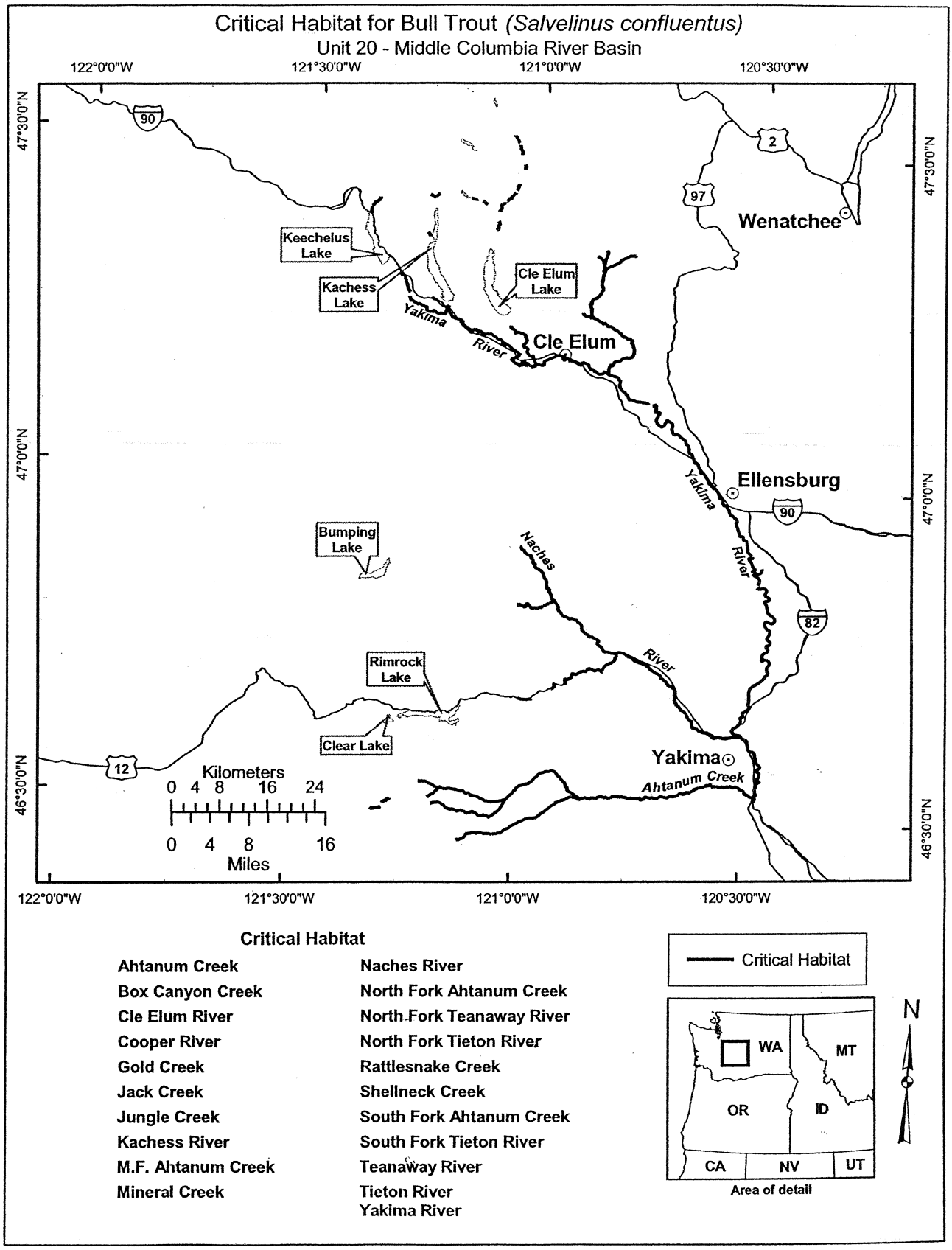
(iv) **Note:** Map of the Lower Columbia River Basin follows:


Critical Habitat for Bull Trout (Salvelinus confluentus)
Unit 19 Lower Columbia River Basin
Lewis River , Klickitat River and White Salmon River Subunits
122°30'0"W
122°0'0"W
46°30'0"N
121°30'0"W
46°0'0"N
45°30'0"N
121°0'0"W
WASHINGTON
OREGON
Kelso
Cougar
Lake Merwin
Lewis River
Yale Lake
Swft Creek Resevior
NFD 25
NFD 23
NFD 90
NFD 24
NFD 30
Vancouver
Portland
Stevenson
Columbia River
Bonneville Dam
Hood River
White Salmon R.
Klickitat
Klickitat River
The Dalles
The Dalles Dam
Kilometers
0 5 10 20 30
0 5 10 20
Miles
Critical Habitat
Lewis River Subunit
Lewis River (Lower)
Lewis River (Upper)
Pine Creek
UNNAMED - off Swift Creek Reservoir
UNNAMED 1 - off Pine Creek
White Salmon River Subunit
White Salmon River
Klickitat River Subunit
Clearwater Creek
Fish Lake Stream
Klickitat River
Little Muddy Creek
Trappers Creek
Two Lakes Stream
UNNAMED - off Fish Lake Stream
West Fork Klickitat River
Critical Habitat
N
WA
MT
OR
ID
CA
NV
UT
Area of detail

(17) Unit 20: Middle Columbia River Basin: Critical habitat is designated on the streams listed below, but only for non-federal lands that have greater than ½ mile of river frontage and are located between the associated endpoints for the stream.

Designated streams and lakes	Stream endpoint latitude	Stream endpoint longitude	Stream endpoint latitude	Stream endpoint longitude
Ahtanum Creek	46.523	−120.853	46.529	−120.472
Box Canyon Creek	47.377	−121.257	47.361	−121.243
Cle Elum River	47.589	−121.161	47.177	−120.990
Cooper River	47.455	−121.213	47.391	−121.098
Gold Creek	47.475	−121.316	47.390	−121.382
Jack Creek	47.334	−120.742	47.319	−120.855
Jungle Creek	47.333	−120.923	47.333	−120.855
Kachess River	47.429	−121.222	47.251	−121.200
M.F. Ahtanum Creek	46.507	−121.179	46.518	−121.014
Mineral Creek	47.424	−121.251	47.420	−121.240
Naches River	46.989	−121.094	46.630	−120.514
North Fork Ahtanum Creek	46.538	−121.211	46.523	−120.853
North Fork Teanaway River	47.454	−120.965	47.251	−120.877
North Fork Tieton River	46.508	−121.435	46.635	−121.261
Rattlesnake Creek	46.760	−121.315	46.820	−120.929
Shellneck Creek	46.516	−121.187	46.531	−121.158
South Fork Ahtanum Creek	46.454	−121.118	46.523	−120.853
South Fork Tieton River	46.496	−121.314	46.627	−121.132
Teanaway River	47.257	−120.897	47.167	−120.834
Tieton River	46.656	−121.129	46.746	−120.786
Yakima River	47.322	−121.339	46.529	−120.472

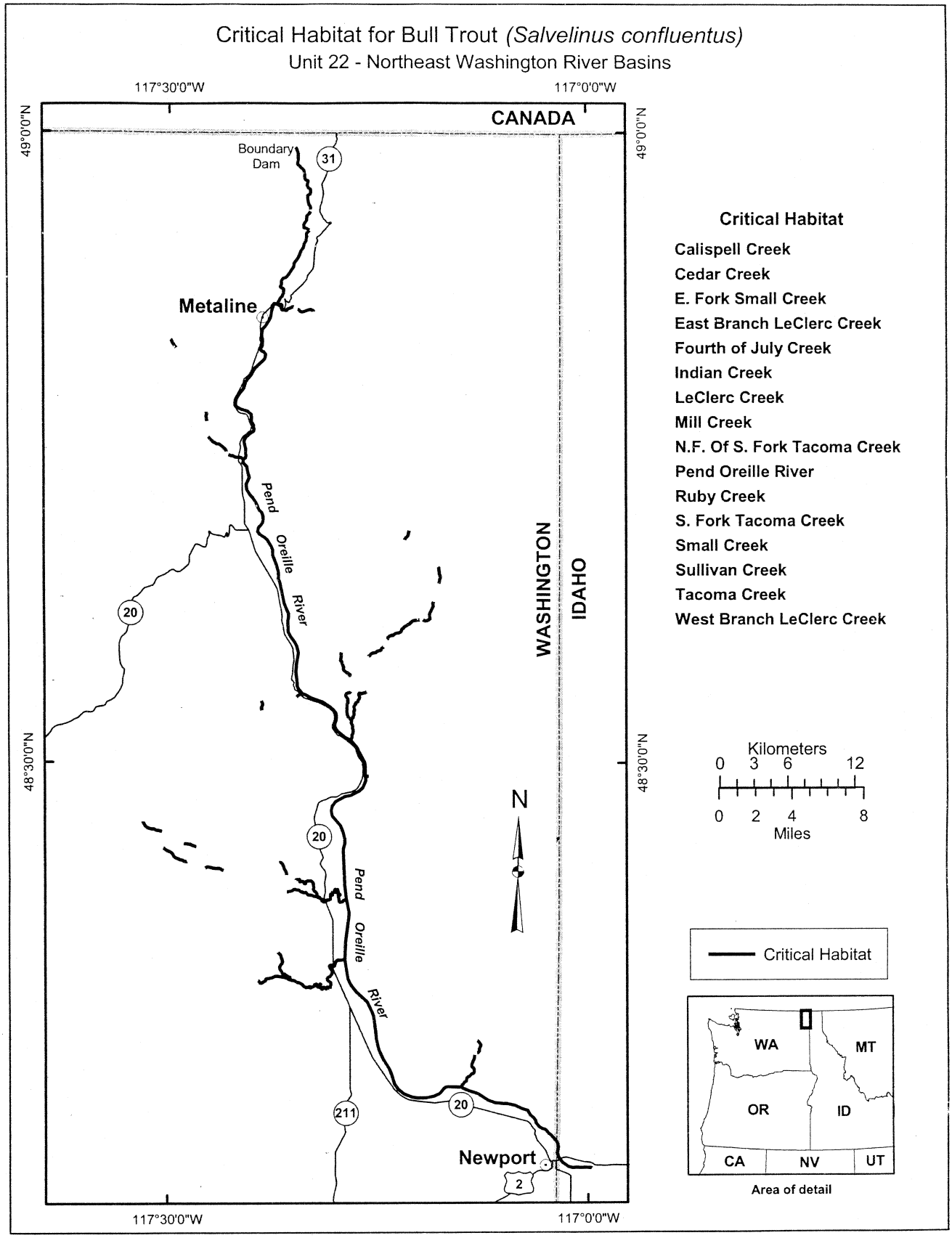
(i) **Note:** Map of the Middle Columbia River Basin follows:


Critical Habitat for Bull Trout (Salvelinus confluentus)
Unit 20 - Middle Columbia River Basin
122°0'0"W
121°30'0"W
121°0'0"W
120°30'0"W
47°30'0"N
47°0'0"N
46°30'0"N
90
2
97
Wenatchee
Keechelus Lake
Kachess Lake
Cle Elum Lake
Yakima River
Cle Elum
Ellensburg
Yakima River
Bumping Lake
Naches River
82
Rimrock Lake
Clear Lake
12
Yakima
Ahtanum Creek
Kilometers
0 4 8 16 24
0 4 8 16
Miles
Critical Habitat
Ahtanum Creek
Box Canyon Creek
Cle Elum River
Cooper River
Gold Creek
Jack Creek
Jungle Creek
Kachess River
M.F. Ahtanum Creek
Mineral Creek
Naches River
North Fork Ahtanum Creek
North Fork Teanaway River
North Fork Tieton River
Rattlesnake Creek
Shellneck Creek
South Fork Ahtanum Creek
South Fork Tieton River
Teanaway River
Tieton River
Yakima River
Critical Habitat
WA
MT
OR
ID
CA
NV
UT
Area of detail
N

(18) Unit 22: Northeast Washington River Basins: Critical habitat is designated on the streams listed below, but only for non-federal lands that have greater than ½ mile of river frontage and are located between the associated endpoints for the stream.

Designated streams and lakes	Stream endpoint latitude	Stream endpoint longitude	Stream endpoint latitude	Stream endpoint longitude
Calispell Creek	48.321	−117.307	48.344	−117.289
Cedar Creek	48.846	−117.521	48.742	−117.411
E. Fork Small Creek	48.371	−117.398	48.328	−117.354
East Branch LeClerc Creek	48.673	−117.188	48.534	−117.282
Fourth of July Creek	48.573	−117.200	48.556	−117.272
Indian Creek	48.299	−117.151	48.243	−117.151
LeClerc Creek	48.534	−117.282	48.518	−117.283
Mill Creek	48.493	−117.239	48.489	−117.265
N.F. of S. Fork Tacoma Creek	48.436	−117.482	48.399	−117.361
Pend Oreille River	48.989	−117.348	48.178	−116.996
Ruby Creek	48.568	−117.509	48.556	−117.342
S. Fork Tacoma Creek	48.432	−117.506	48.394	−117.323
Small Creek	48.337	−117.409	48.321	−117.307
Sullivan Creek	48.950	−117.070	48.865	−117.370
Tacoma Creek	48.445	−117.507	48.392	−117.288
West Branch LeClerc Creek	48.701	−117.211	48.534	−117.282

(i) **Note:** Map of the Northeast Washington River Basins follows:


Critical Habitat for Bull Trout (Salvelinus confluentus)
Unit 22 - Northeast Washington River Basins
117°30'0"W
117°0'0"W
49°0'0"N
48°30'0"N
CANADA
Boundary Dam
31
Metaline
Pend Oreille River
20
WASHINGTON
IDAHO
N
211
Newport
2
Critical Habitat
Calispell Creek
Cedar Creek
E. Fork Small Creek
East Branch LeClerc Creek
Fourth of July Creek
Indian Creek
LeClerc Creek
Mill Creek
N.F. Of S. Fork Tacoma Creek
Pend Oreille River
Ruby Creek
S. Fork Tacoma Creek
Small Creek
Sullivan Creek
Tacoma Creek
West Branch LeClerc Creek
Kilometers
0 3 6 12
0 2 4 8
Miles
Critical Habitat
WA
MT
OR
ID
CA
NV
UT
Area of detail

(19) Unit 23: Snake River Basin in Washington: Critical habitat is designated on the streams listed below, but only for non-federal lands that have greater than ½ mile of river frontage and are located between the associated endpoints for the stream.

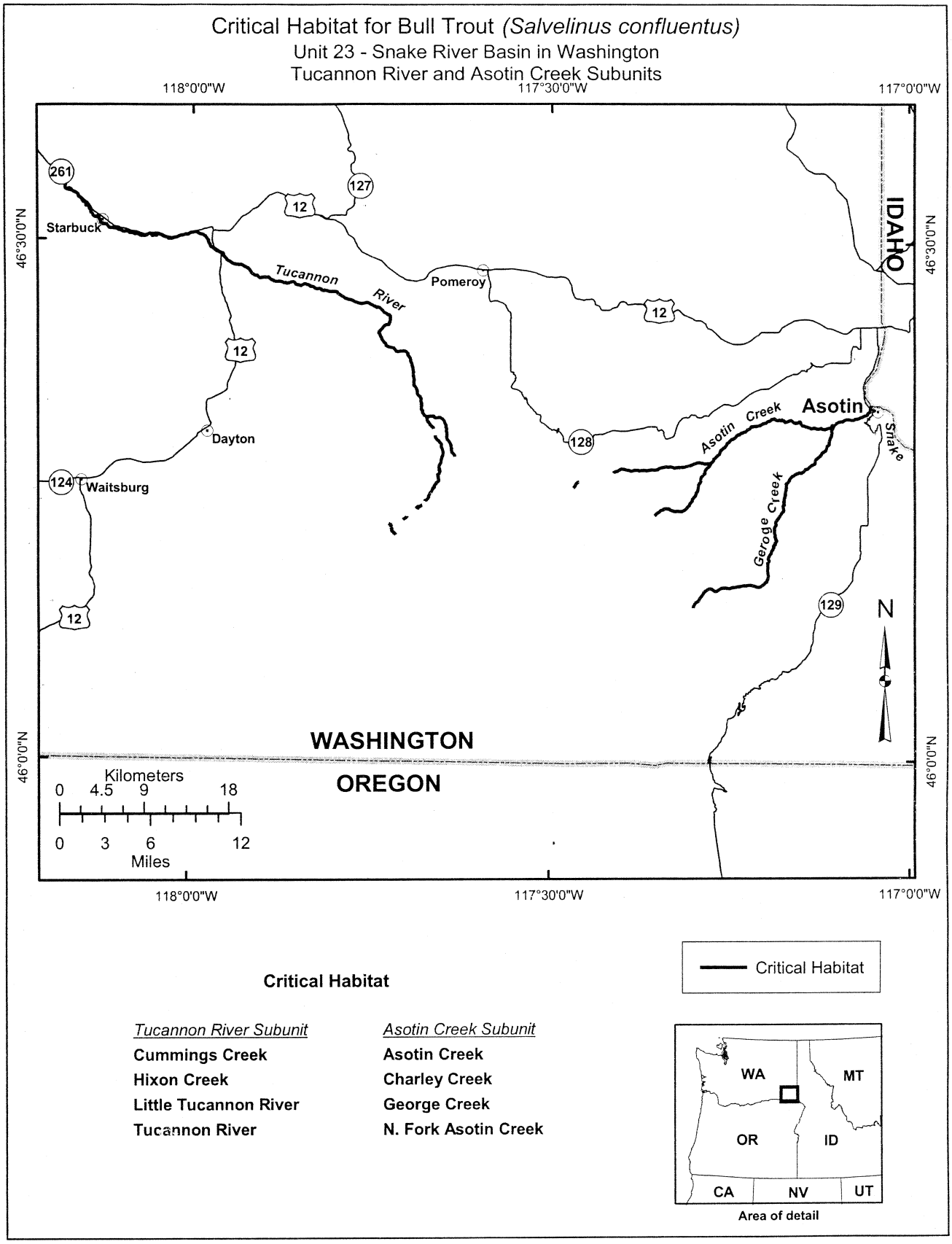
(i) Tucannon River Subunit.

Designated streams and lakes	Stream endpoint latitude	Stream endpoint longitude	Stream endpoint latitude	Stream endpoint longitude
Cummings Creek	46.219	−117.595	46.333	−117.674
Hixon Creek	46.219	−117.651	46.246	−117.683
Little Tucannon River	46.181	−117.751	46.228	−117.721
Tucannon River	46.139	−117.520	46.558	−118.174

(ii) Asotin Creek Subunit.

Designated streams and lakes	Stream endpoint latitude	Stream endpoint longitude	Stream endpoint latitude	Stream endpoint longitude
Asotin Creek	46.272	−117.291	46.345	−117.053
Charley Creek	46.210	−117.552	46.289	−117.278
George Creek	46.118	−117.363	46.326	−117.105
N. Fork Asotin Creek	46.196	−117.568	46.272	−117.291

(iii) **Note:** Map Snake River Basin in Washington follows:


Critical Habitat for Bull Trout (Salvelinus confluentus)
Unit 23 - Snake River Basin in Washington
Tucannon River and Asotin Creek Subunits
118°0'0"W
117°30'0"W
117°0'0"W
46°30'0"N
46°0'0"N
261
127
12
Starbuck
Tucannon
River
Pomeroy
IDAHO
Dayton
124
Waitsburg
128
Asotin Creek
Asotin
Snake
Geroge Creek
129
N
WASHINGTON
OREGON
Kilometers
0 4.5 9 18
0 3 6 12
Miles
Critical Habitat
Critical Habitat
Tucannon River Subunit
Cummings Creek
Hixon Creek
Little Tucannon River
Tucannon River
Asotin Creek Subunit
Asotin Creek
Charley Creek
George Creek
N. Fork Asotin Creek
WA
MT
OR
ID
CA
NV
UT
Area of detail

* * * * *

Dated: September 21, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–22038 Filed 10–5–04; 8:45 am]

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LIST OF PUBLIC LAWS

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H.R. 5183/P.L. 108–310

Surface Transportation Extension Act of 2004, Part V (Sept. 30, 2004; 118 Stat. 1144)

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