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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 220

RIN 0584–AD50

School Breakfast Program: Severe Need Assistance

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule addresses and implements amendments made by Section 201 of the Child Nutrition and WIC Reauthorization Act of 2004. The rule amends the School Breakfast Program (SBP) regulations to eliminate the requirement that a school's costs exceed the rate of reimbursement as a criterion for receiving the higher severe need funding available in the SBP. This rule also allows State agencies to provide severe need reimbursements to certain new schools that are beginning participation in the school feeding programs and therefore have no historical second preceding year participation information, as was previously required. This rule is intended to simplify eligibility for severe need reimbursements by removing previous restrictions on receipt of those payments. This rule does not impose new administrative requirements on State or local governmental entities.

DATES: *Effective Date:* December 2, 2005.

Comments Date: Comments on this rule must be postmarked on or before May 1, 2006 to be assured of consideration. Comments will also be accepted via E-Mail submission, at the address listed below. E-mail submissions must be received no later than 11:59 p.m. on May 1, 2006 to be assured of consideration.

ADDRESSES: The Food and Nutrition Service invites interested persons to submit comments on this interim rule. Comments may be submitted by any of the following methods:

- E-Mail: Send comments to *CNDPROPOSAL@FNS.USDA.GOV* The subject line must contain the phrase ''School Breakfast Program Regulations: Severe Need Assistance''.
- Fax: Submit comments by facsimile transmission to: (703) 305–2879, attention Mr. Robert Eadie. The subject line must contain the phrase ''School Breakfast Program Regulations: Severe Need Assistance''.
- Mail: Comments should be addressed to Mr. Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302–1594.
- Hand Delivery or Courier: Deliver comments to 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302–1594, during normal business hours of 8:30 a.m.–5 p.m.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

All submissions will be available for public inspection at 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302–1594, Monday through Friday, 8:30 a.m.–5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Davenport, Child Nutrition Division, Food and Nutrition Service at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Background

The rules concerning the amounts to be paid to schools participating in the SBP for providing Program benefits are set forth in Section 4(b) of the Child Nutrition Act of 1966 (CNA), 42 U.S.C. 1773(b) and in 7 CFR 220.9. In addition to the standard SBP rates of reimbursement, schools determined to be in ''severe need'' are authorized to receive additional funding in order to effectively provide Program benefits.

The requirements for schools to qualify to receive severe need rates of reimbursement under the SBP are described in 7 CFR 220.9(e). The regulation currently establishes the criteria a school is required to meet to be eligible to receive severe need reimbursements under the SBP. The first criterion is that the normal reimbursement rate established by the Secretary would not provide the school in question with sufficient funds to cover the costs of the breakfast program. The second eligibility criterion is that the school is participating in or desiring to initiate a breakfast program, and the third is that 40 percent or more of the lunches served to students at the school in the second preceding school year were served free or at a reduced price. Under 7 CFR 220.9(d), schools received the lesser of their documented costs for free and reduced price breakfasts or the product of the number of free and reduced price meals times the applicable severe need rate of reimbursement.

On June 30, 2004, the President signed the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265). Section 201 of Public Law 108–265 amended section 4 of the CNA to remove the requirement that the per meal reimbursement rate established by the Secretary be inadequate to cover the costs of the school's breakfast program as a threshold requirement to qualify for severe need funding. The law also allows eligibility for severe need subsidies to be available for breakfasts served in schools in which no reimbursable lunches were served in the second preceding year if the Secretary determines that those schools would have met the requirement of serving 40 percent or more of their lunches free or at a reduced price. The Department will establish through guidance how the Secretary will make this determination. This rule makes changes to the regulations in 7 CFR 220.9(d) and (e) to reflect the changes mandated by Public Law 108–265.

What Specific Changes Does This Rule Make?

- Removes 7 CFR 220.9(d) and redesignates current 7 CFR 220.9(e) as 7 CFR 220.9(d).
- Removes the requirement in current 7 CFR 220.9(e) that schools document that the normal per meal reimbursement is insufficient to cover the costs of the SBP.
- Makes technical changes to 7 CFR 220.9(c)(2) and current 7 CFR 220.9(e)(3) to remove outdated references to severe need reimbursement for schools in States that are required by law to serve breakfasts.

• Adds an exception to the criterion, established in redesignated 7 CFR 220.9(d), which allows States, in accordance with guidance provided by the Secretary, in schools which did not serve meals in the second preceding school year, to determine if 40 percent or more of the meals served to students would have otherwise been served free or at a reduced rate.

Why Is This Rule Being Issued as an Interim Rule and Not a Proposed Rule?

Section 501(b) of Public Law 108–265 states that FNS may promulgate interim regulations to implement the requirements of Section 201 discussed above. The Secretary has deemed the requirements of this provision sufficient to warrant an interim regulation, without regard to the Administrative Procedure Act's prior notice and comment provisions at 5 U.S.C. 553; the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking; and the Paperwork Reduction Act at 44 U.S.C. Chapter 35. However, issuance of these program changes also allows FNS to request and consider public comment that may assist in future amendments to this rule. FNS intends to issue a final rule after consideration of comments received on this rule.

When Does This Rule Take Effect?

Section 201 of Public Law 108–265 became effective on July 1, 2004. Beginning with School Year 2004–2005, otherwise qualified schools no longer have to justify SBP costs or maintain cost records to receive the severe need reimbursement rate for the SBP. However, any claims outstanding from School Year 2003–2004 are still subject to the cost-accounting procedures for severe need assistance. FNS informed State agencies of these provisions immediately after the law was signed.

Executive Order 12866

This interim rule has been determined to be non-significant and is not subject to review by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This interim rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Roberto Salazar, Administrator of the Food and Nutrition Service, has certified that it will not have a significant economic impact on a substantial number of small entities.

This interim rule reduces administrative burdens for school food authorities operating the SBP that wish to apply for severe need funding.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally prepares a written statement, including a cost-benefit analysis. This is done for rules that have ''Federal mandates'' which may result in expenditures of $100 million or more in any one year by State, local, or tribal governments, in the aggregate, or by the private sector. When this statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives. It must then adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

This interim rule contains no Federal mandates of $100 million or more in any one year (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this interim rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The School Breakfast Program is listed in the Catalog of Federal Domestic Assistance under No. 10.553. This program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and interim rule related notice at 48 FR 29115, June 24, 1983).

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have Federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of this preamble. Before any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

Under USDA Regulation 4300–4, Civil Rights Impact Analysis, FNS has reviewed this interim rule to identify and address any major civil rights impacts the interim rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this interim rule will not in any way limit or reduce participants' ability to participate in the Child Nutrition Programs on the basis of an individual's or group's race, color, national origin, sex, age, or disability (the Child Nutrition Programs' nondiscrimination policy can be found at 7 CFR 210.23(b)). FNS found no factors that would negatively and disproportionately affect any group of individuals.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. Information collections in this interim rule have been previously approved under OMB #0584–0012. This interim rule contains information collections that are subject to review and approval by OMB; therefore, FNS is submitting for public comment the changes in the information collection burden that would result from adoption of the provisions in the rule.

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

practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this Notice will be summarized and included in the request for OMB approval, and will become a matter of public record. Comments may be sent to Katherine Astrich, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. A copy may also be sent to Mr. Robert Eadie at the address below. For further information, or for copies of the information collection, please contact Mr. Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 634, Alexandria, Virginia 22302–1594.

Comments will also be accepted via E–Mail submission if sent to *CNDPROPOSAL@FNS.USDA.GOV.* When submitting comments via E-Mail, you must include ''School Breakfast Program Regulations: Severe Need Assistance'' in the subject line.

Comments and recommendations on the proposed information collection must be received by January 3, 2006. All responses to this information collection will be summarized and included in the request for OMB approval and will become a matter of public record.

Title: School Breakfast Program Regulations.

OMB Number: 0584–0012.

Expiration Date: August 31, 2007.

Type of Request: Revision of a currently approved collection.

Abstract: The School Breakfast Program (SBP) regulations are being amended to implement section 201 of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265) regarding severe need in the program. Specifically, section 201 of Public Law 108–265 eliminates the requirement to document costs in order to receive the severe need reimbursement rate. Consequently, this rule will remove the requirement that schools maintain records to support the cost of producing breakfasts in order to receive federal reimbursement at the severe need rates.

The severe need cost accounting requirements are being removed by revising 7 CFR 220.9(d) and (e). Therefore, the reporting and recordkeeping requirements are also being removed.

Estimate of Burden: The current inventory for School Breakfast Program, OMB 0584–0012 collection is 4,564,772 burden hours. Consequently, when this rule is published and the burden package is approved, the reporting burden will decrease by 70,034 hours and the recordkeeping will decrease by 2,098,273 hours. The total reduction in burden hours for School Breakfast Program, OMB 0584–0012 will be 2,170,307 hours; the new burden hours will be 150,988 for reporting and 2,287,710 for recordkeeping for a total of 2,438,698 burden hours.

Number of Respondents: 84,138 respondents.

Average Number of Responses per Respondent: 10 responses.

Estimated Total Annual Responses: 872,915 responses.

Estimated Time per Response: .17 hours/response.

Estimated Annual Reporting Burden Hours:—150,988 hours.

Number of Recordkeepers: 84,138 respondents.

Estimated Annual Hours per Recordkeeper: 27.19 hours.

Estimated Annual Recordkeeping Hours: 2,287,710 hours.

Total Request—Annual Reporting and Recording Burden Hours: 2,438,698 hours.

Government Paperwork Elimination Act

The Food and Nutrition Service makes every effort to comply with the Government Paperwork Elimination Act by providing electronic submission in lieu of paper submission whenever it is feasible. School food authorities demonstrate their eligibility for severe need reimbursements by applying to their State agency. State agencies have the option of accepting and reviewing these applications electronically. The Food and Consumer Service encourages State agencies to provide electronic submission in lieu of paper submission where feasible.

Public Participation

FNS has determined, in accordance with 5 U.S.C. 553(b), that a Notice of Proposed Rulemaking and the opportunity for public comments is unnecessary and contrary to the public interest and, in accordance with 5 U.S.C. 553(d), finds that good cause exists for making this action effective without prior public comment. In Section 501(b) of Public Law 108–265, Congress specifically afforded the Secretary the option of implementing this rulemaking without prior notice and comment. In addition, the provisions of this interim rule reflect mandatory statutory requirements which are non-discretionary. The Department, however, wishes to receive comments that might improve the administration of these mandatory requirements.

List of Subjects in 7 CFR Part 220

Grant programs-education, Grant programs-health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

■ Accordingly, 7 CFR part 220 is amended as follows:

PART 220—SCHOOL BREAKFAST PROGRAM

■ 1. The authority citation for 7 CFR part 220 continues to read as follows:

Authority: 42 U.S.C. 1773 and 1779, unless otherwise noted.

■ 2. In § 220.9,

■ a. Paragraph (c) is revised; and

■ b. Paragraph (d) is removed and paragraph (e) is redesignated as paragraph (d) and revised.

The revisions read as follows:

§ 220.9 Reimbursement payments.

* * * * *

(c) The total reimbursement for breakfasts served to eligible children in schools not in severe need, and schools in severe need during the school year shall not exceed the sum of the products obtained by multiplying the total numbers of such free, reduced price and paid breakfasts, respectively, by the applicable rate of reimbursement for each type of breakfast as prescribed for the school year.

(d) The State agency, or FNSRO where applicable, shall determine whether a school is in severe need based on the following eligibility criteria:

(1) The school is participating in or desiring to initiate a breakfast program; and

(2) At least 40 percent of the lunches served to students at the school in the second preceding school year were served free or at a reduced price. Schools that did not serve lunches in the second preceding year and that would like to receive reimbursement at the severe need rate may apply to their administering State agency. The administering State agency shall approve or deny such requests in accordance with guidance, issued by the

Secretary, that determines that the second preceding school year requirement would otherwise have been met.

Dated: October 20, 2005.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 05–21785 Filed 11–1–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22701; Directorate Identifier 2005–NE–37–AD; Amendment 39–14356; AD 2005–22–12]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–80E1 Series Turbofan Engines

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for General Electric Company (GE) CF6–80E1 series turbofan engines installed on Airbus Industrie A330 series airplanes. This AD requires a check of the holding torque of the thrust reverser actuation system (TRAS) locks, and if necessary a visual inspection of the TRAS lock flexible drive shafts, within 10 flight cycles after all aborted takeoffs in which the thrust reverser was deployed. This AD results from reports of operators finding several damaged TRAS lock flexible drive shafts during inspections and checks of the drive shafts. We are issuing this AD to prevent inadvertent in-flight deployment of the thrust reverser, which can result in loss of control of the airplane.

DATES: This AD becomes effective December 2, 2005.

We must receive any comments on this AD by January 3, 2006.

ADDRESSES: Use one of the following addresses to comment 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 20590–0001.
- 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.

Contact Middle River Aircraft Systems, Mail Point 46, 103 Chesapeake Park Plaza, Baltimore, MD, 21220–4295, attn: Warranty Support, telephone: (410) 682–0094, fax: (410) 682–0100 for the alert service bulletin identified in this AD. Contact General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422, for the temporary revision identified in this AD. Contact Airbus, 1 Rond Point Maurice Bellionte, 31707 Blagnac Cedex, France, for the Airbus A330 manual information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Office Park; telephone (781) 238–7192; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA issued AD 2002–10–08 (67 FR 36090, May 23, 2002) on May 9, 2002. That AD requires initial and repetitive thrust reverser inspections and checks. That AD resulted from reports of service-induced hardware deterioration that reduces the overall thrust reverser system protection against inadvertent deployment, which can result in loss of control of the airplane. Since we issued that AD, we received reports of operators finding several damaged TRAS lock flexible drive shafts. The operators found these damaged shafts while complying with the torque check specified in AD 2002–10–08. Investigation and analysis by GE and the FAA revealed that high end-of-stroke impact caused the damage. End-of-stroke impact is highest when the thrust reverser is commanded to deploy during an aborted take-off. The TRAS lock flexible drive shaft attaches the upper end actuator to the TRAS lock. When the system is commanded to deploy, the TRAS lock rotates to allow movement of the thrust reverser. At the end of the deployment stroke, the actuation system end-actuator hits its hard stop, while the TRAS lock continues to rotate. The TRAS lock then transmits its rotating inertia to the TRAS lock flexible drive shafts. This transmission of inertia can cause twisting, shearing, or bird caging of the drive shafts, leading to loss of the holding torque in the TRAS lock. Loss of holding torque reduces the effectiveness of the lock and if not corrected, can increase the probability of an in-flight inadvertent deployment of the thrust reverser, which can result in loss of control of the airplane.

FAA's Determination and Requirements of This AD

Although this affected engine model is not used on any airplanes that are registered in the United States, the possibility exists that this engine model could be used on airplanes registered in the United States in the future. We are issuing this AD to prevent inadvertent in-flight deployment of the thrust reverser, which can result in loss of control of the airplane. This AD requires performing a check of the holding torque of the TRAS locks, and if necessary a visual inspection of the TRAS lock flexible drive shafts, within 10 flight cycles after all aborted takeoffs in which the thrust reverser was deployed. This AD also requires replacing any damaged flexible drive shafts or locks.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this engine model, notice and opportunity for public comment before issuing this AD are unnecessary. A situation exists that allows the immediate adoption of this regulation.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. FAA–2005–22701; Directorate Identifier 2005–NE–37–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

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 the DMS 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 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*.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility 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 **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that 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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Under 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. The FAA amends § 39.13 by adding the following new airworthiness directive:

2005–22–12 General Electric Company: Amendment 39–14356. Docket No. FAA–2005–22701; Directorate Identifier 2005–NE–37–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 2, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF6–80E1 series turbofan engines. These engines are installed on, but not limited to, Airbus Industrie A330 series airplanes.

Unsafe Condition

(d) This AD results from reports of operators finding several damaged thrust reverser actuation system (TRAS) lock flexible drive shafts during inspections and checks of the drive shafts. We are issuing this AD to prevent inadvertent in-flight deployment of the thrust reverser, which can result in loss of control of 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.

(f) Within 10 flight cycles after all aborted takeoffs in which the thrust reverser was deployed, do the following:

(1) Perform a check of the holding torque of the TRAS locks.

(2) Based on the results of the holding torque check, perform a visual inspection of the TRAS lock flexible drive shafts if necessary.

(3) Replace any damaged flexible drive shafts or locks.

(g) Information on performing a check of the holding torque of the TRAS locks, and a visual inspection of the TRAS lock flexible drive shafts, can be found in the Airbus A330 Aircraft Maintenance Manual, Task 72–00–00–200–850.

Alternative Methods of Compliance

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

Related Information

(i) Middle River Aircraft Systems Alert Service Bulletin No. CF6–80E1 S/B 78A5097, dated June 14, 2005, and General Electric CF6–80E1 Series Engine Manual Temporary Revision No. 05–0049, dated August 24, 2005, pertain to the subject of this AD.

Issued in Burlington, Massachusetts, on October 27, 2005.

Peter A. White,

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

[FR Doc. 05–21805 Filed 11–1–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21694; Airspace Docket No. 04–ASO–16]

RIN 2120–AA66

Establishment of Area Navigation Instrument Flight Rules Terminal Transition Routes (RITTR); Jacksonville, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes five Area Navigation Instrument Flight Rules Terminal Transition Routes (RITTR) in the Jacksonville, FL terminal area. The FAA originally proposed to establish seven routes as part of this action, but decided not to implement routes T–206 and T–210 at this time. RITTRs are low altitude Air Traffic Service (ATS) routes, based on area navigation (RNAV), for use by aircraft having instrument flight rules (IFR)-approved Global Positioning System (GPS)/Global Navigation Satellite System (GNSS) equipment. The purpose of RITTR is to expedite the handling of IFR overflight traffic through busy terminal airspace areas. The FAA is taking this action to enhance safety and the efficient use of the navigable airspace in the Jacksonville, FL, terminal area.

EFFECTIVE DATE: 0901 UTC, December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On July 1, 2005, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish seven RITTRs in the Jacksonville, FL, terminal area (70 FR 38053). Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal to the FAA. No comments were received in response to the NPRM. After the comment period closed, an aviation organization contacted the FAA to request an additional comment period as the proposal was incorrectly listed in the July 1, 2005, **Federal Register** Table of Contents. In view of the request, and since no comments were received during the original comment period, the FAA reopened the comment period on September 28, 2005 (70 FR 56606). One comment was received.

Analysis of Comments

The commenter wrote in support of the proposal and added recommendations that the routes be available at multiple altitudes; that the FAA incorporate guidance to allow pilots operating under visual flight rules (VFR) to use the routes when transitioning through terminal airspace; and that the FAA continue working with users to identify and chart needed routes through busy terminal areas.

Regarding route altitudes, the charted depiction will include a GNSS minimum enroute altitude (MEA), but specific flight altitudes are not identified. Altitude assignments for the routes will be based on various factors including the flight plan filed altitude, air traffic volume, and available altitudes within the airspace allocated to Jacksonville, FL, Terminal Radar Approach Control (TRACON).

Concerning the recommendation for use of the routes by VFR aircraft, the FAA does not plan to issue guidance at this time. RITTRs were developed specifically to provide routing for GNSS-equipped aircraft, that are operating on an IFR flight plan, to transition through busy terminal areas. The fixes/waypoints used to define the routes do not have associated visual landmarks for reference by VFR pilots when navigating through the area. There are a number of programs in place to assist VFR pilots in either avoiding or transitioning through Class B airspace or other airspace areas, where needed, such as the Charted VFR Flyway Planning Chart Program, the Terminal Area VFR Route Program, and the VFR Waypoint Chart Program. These flyways, routes and waypoints, when designated, are depicted on the appropriate VFR Terminal Area Charts. VFR aircraft desiring to transit Class B airspace must obtain air traffic control (ATC) clearance to operate in Class B airspace. ATC may approve or deny requests from VFR aircraft to operate in or through Class B airspace based on controller workload, operational limitations and traffic conditions. In this respect, pilots of a suitably equipped VFR aircraft could request transit through the area along a RITTR track, but the request would be subject to ATC approval as described above.

Lastly, the FAA remains committed to the goal of expanded use of RNAV in the National Airspace System. Work is in progress to identify additional locations where RITTRs would enhance the efficient use of the navigable airspace.

Discussion

This rule incorporates changes to some of the routes that were proposed in the NPRM based on further analysis of ATC requirements and/or to correct typographical errors. T–208 is amended by adding a segment to extend the route from the CARRA fix southeastward to the Ormond Beach, FL, VORTAC. T–211 is amended by adding a segment to extend the route from the CARRA fix northward to the Craig, FL, VORTAC. These extensions provide additional links to the VOR Federal airway structure.

Due to a typographical error in the description of route T–208, the three-letter identifier for the Gators, FL, VORTAC was incorrectly stated in the NPRM as ''GVN.'' The correct Gators identifier is ''GNV'' and is corrected in this rule. In addition, in the NPRM, the points CARRA and MONIA were identified as ''WP'' (waypoint). These points are actually existing charted navigation fixes, therefore an editorial change to the affected route descriptions is being made in this rule to replace ''WP'' with ''fix.'' Also, the order of the points listed in the descriptions of routes T–205 and T–207 is reversed in this rule to match flight inspection forms which utilize a ''south to north'' orientation. This does not affect the actual alignment of T–205 or T–207.

The FAA decided not to implement two of the proposed routes at this time. It was determined that route T–206 is not needed by ATC. Additionally, route T–210, between the Taylor, FL, VORTAC and the Cecil, FL, VOR, requires further modification and will be addressed by separate rulemaking action at a later date.

With the exception of editorial changes, and the changes described above, this amendment is the same as that proposed in the notice.

Low altitude Area Navigation Routes are published in paragraph 6011 of FAA Order 7400.9N dated September 1, 2005 and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The routes listed in this document will be published subsequently in the order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing five RITTRs, designated as T–204, T–205, T–207, T–208, and T–211, in the Jacksonville, FL, terminal area. These routes will be depicted in blue on the appropriate IFR en route low altitude charts. RITTRs are low altitude RNAV routes designed to facilitate the expeditious movement of IFR overflight traffic around or through certain congested terminal airspace areas. The routes may be used by GNSS-equipped aircraft that are capable of filing flight plan equipment suffix ''/G.'' The FAA is taking this action to enhance safety and facilitate the more flexible and efficient use of the navigable airspace for en route IFR aircraft transitioning through the Jacksonville, FL, terminal area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 6011 Area Navigation Routes

* * * * *

T–204 Taylor, FL to Brunswick, GA [New]

Taylor, FL (TAY)	VORTAC	(Lat. 30°30′17″ N., long. 82°33′11″ W.)
Brunswick, GA (SSI)	VORTAC	(Lat. 31°03′02″ N., long. 81°26′46″ W.)

* * * * * * *

T–205 Ocala, FL to Valdosta, GA [New]

Ocala, FL (OCF)	VORTAC	(Lat. 29°10′39″ N., long. 82°13′35″ W.)
Valdosta, GA (OTK)	VOR/DME	(Lat. 30°46′50″ N., long. 83°16′47″ W.)

* * * * * * *

T–207 Ormond Beach, FL to Waycross, GA [New]

Ormond Beach, FL (OMN)	VORTAC	(Lat. 29°18′12″ N., long. 81°06′46″ W.)
CARRA	Fix	(Lat. 29°43′51″ N., long. 81°36′29″ W.)
Cecil, FL (VQQ)	VOR	(Lat. 30°12′47″ N., long. 81°53′27″ W.)
MONIA, FL	Fix	(Lat. 30°28′49″ N., long. 82°02′53″ W.)
Waycross, GA (AYS)	VORTAC	(Lat. 31°16′10″ N., long. 82°33′23″ W.)

* * * * * * *

T–208 Gators, FL to Ormond Beach, FL [New]

Gators, FL (GNV)	VORTAC	(Lat. 29°41′32″ N., long. 82°16′23″ W.)
CARRA	Fix	(Lat. 29°43′51″ N., long. 81°36′29″ W.)
Ormond Beach, FL (OMN)	VORTAC	(Lat. 29°18′12″ N., long. 81°06′46″ W.)

* * * * * * *

T–211 Ocala, FL to Craig, FL [New]

Ocala, FL (OCF)	VORTAC	(Lat. 29°10′39″ N., long. 82°13′35″ W.)
JUTTS	WP	(Lat. 29°36′00″ N., long. 82°02′00″ W.)
CARRA	Fix	(Lat. 29°43′51″ N., long. 81°36′29″ W.)
Craig, FL (CRG)	VORTAC	(Lat. 30°20′20″ N., long. 81°30′36″ W.)

* * * * * * *

Issued in Washington, DC on October 27, 2005.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. 05–21879 Filed 11–1–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2005–19411; SFAR No. 105]

RIN 2120–AI47

Reservation System for Unscheduled Arrivals at Chicago's O'Hare International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; extension of expiration date.

SUMMARY: This action extends the expiration date of Special Federal Aviation Regulation (SFAR) No. 105 through March 31, 2006. This action is necessary to maintain the reservation system established for unscheduled arrivals at O'Hare International Airport while the FAA completes rulemaking associated with scheduled arrivals at the airport.

DATES: This final rule is effective on October 28, 2005, and SFAR No. 105 published at 70 FR 39610 (July 8, 2005), as amended in this rule, shall remain in effect until March 31, 2006.

FOR FURTHER INFORMATION CONTACT: Gerry Shakley, System Operations Services, Air Traffic Organization; Telephone: (202) 267–9424; E-mail: *gerry.shakley@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out

more about SBREFA on the Internet at our site, *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

Authority for This Rulemaking

The U.S. Government has exclusive sovereignty over the airspace of the United States.[1] Under this broad authority, Congress has delegated to the Administrator extensive and plenary authority to ensure the safety of aircraft and the efficient use of the Nation's navigable airspace. In this regard, the Administrator is required to assign by regulation or order use of the airspace to ensure its efficient use.[2]

The FAA's broad statutory authority to manage the efficient use of airspace encompasses management of the nationwide system of air commerce and air traffic control. To ensure the efficient use of the airspace, the FAA must take steps to prevent congestion at an airport from disrupting or adversely affecting the air traffic system for which the FAA is responsible. Inordinate delays of the sort experienced at O'Hare in late 2003 and much of 2004 can have a crippling effect on other parts of the system, causing significant losses in time and money for individuals and businesses, as well as the air carriers and other operators at O'Hare and beyond. This rule facilitates the Agency's exercise of its authority to manage the safe and efficient use of the navigable airspace.

Background

Since November 2003, O'Hare has suffered an inordinate and unacceptable number of delays as the result of over-scheduling at the airport, which was also having a crippling effect on the entire National Airspace System. In August 2004, the FAA intervened by ordering a limit on the number of scheduled arrivals at the airport during the peak operating hours of 7 a.m. through 8:59 p.m., Central Time, effective November 1, 2004, so that the system could return to a reasonably balanced level of operations and delay.[3]

On October 20, 2004, we published a notice of proposed rulemaking (NPRM) seeking public comments on a proposed reservation system for unscheduled arrivals at O'Hare (69 FR 61708). While this rulemaking was pending, we implemented a corresponding voluntary reservation program for unscheduled arrivals using the general procedures followed during Special Traffic Management Programs and the High Density Rule, effective November 1, 2004.

On July 8, 2005, the FAA published SFAR No. 105, ''Reservation System for Unscheduled Arrivals at Chicago's O'Hare International Airport'' (70 FR 39610). As we stated in SFAR No. 105, the benefits achieved by the FAA's August 18 Order would dissipate if certain operations at the airport remained capped but other operations were permitted to grow. SFAR No. 105 maintained the historical level of unscheduled operations at O'Hare and supported other agency actions at O'Hare that address congestion and delay until additional capacity exists at the airport.

In SFAR No. 105, we discussed that it may be necessary to extend this rule limiting unscheduled arrivals at O'Hare to coincide with a final rule addressing scheduled arrivals, if adopted, or with an extension of the August 2004 Order. The NPRM addressing scheduled arrivals at O'Hare was published on March 25, 2005 (70 FR 15520), and the agency is currently evaluating the comments. The FAA recently extended the August 2004 Order through April 1, 2006.[4] We conclude that it is necessary to extend SFAR 105 through March 31, 2006,[5] to maintain the current operating environment at the airport.

The 5-month extension is necessary to conclude any rulemaking addressing limits on scheduled arrivals and consider the effect that rulemaking will have, if any, on SFAR No. 105. We are not seeking public comment on this 5-month extension, as the extension is but for a limited duration and provides an interim measure pending adoption of a comprehensive regulation that addresses scheduled operations at the airport. If this SFAR needs to be extended beyond the date adopted here, the Agency will proceed with notice and comment procedures.

Therefore, we find that notice and comment procedures under 5 U.S.C. section 553(b) are impracticable and contrary to the public interest. We further find that good cause exists to make this rule effective in less than 30 days.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Paperwork Reduction Act

Information collection requirements associated with this final rule have been approved previously by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0694.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the new information collection requirements(s) in this final rule to the Office of Management and Budget (OMB) for its review. OMB approved the collection of this information and assigned OMB Control Number 2120–0694.

This final rule establishes a reservation system to limit the number of unscheduled aircraft arrivals at Chicago's O'Hare International Airport (O'Hare) during the peak hours of 7 a.m. through 8:59 p.m., Central Time, Monday through Friday, and 12 p.m. through 8:59 p.m. Central Time on Sunday. We received no comments from the public that specifically discussed information collection.

An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement, unless it displays a currently valid OMB control number.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandate Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the

[1] 49 U.S.C. 40103(a).

[2] 49 U.S.C. 40103(b)(1).

[3] Operating Limitations at Chicago International Airport. Docket No. FAA–2004–16944.

[4] *See* 70 FR 59798; October 13, 2005.

[5] The limits on unscheduled arrivals do not apply on Saturdays.

expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation). This portion of the preamble summarizes the FAA's analysis of the economic impact of this SFAR extension.

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a rule does not warrant a full evaluation, this order permits a statement to that effect. The basis for the minimal impact must be included in the preamble, if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this rule. The reasoning for that determination follows:

In the preamble of SFAR No. 105, the FAA stated that we might consider extending SFAR 105 for a time period that would coincide with a final rule limiting scheduled operations. Because the Agency has not adopted a final rule limiting scheduled operations, the FAA is extending this SFAR through March 31, 2006. In the final economic assessment of SFAR No. 105, the FAA found that the rule provided system delay benefits at a minimal cost. The FAA finds that this extension is cost beneficial and will continue to provide system delay benefits at minimal cost.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies consider flexible regulatory proposals, to explain the rationale for their actions, and to solicit comments. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule extends the expiration date of SFAR No. 105, which provides for fewer airport delays at a minimum cost. Just as in the initial and final regulatory flexibility analyses, the FAA expects there will be a substantial number of small entities affected by the extension of this final SFAR, however, the economic effect will continue to be insignificant. Therefore, as the FAA Administrator, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of the extension of this final rule and determined that it will not have an effect on foreign commerce.

Unfunded Mandate Reform Act

The Unfunded Mandate Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandate Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312f, and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Alaska, Navigation (air), Reporting and recordkeeping requirements.

The Amendment

■ For the reasons set forth above, the Federal Aviation Administration is amending chapter I of title 14 Code of Federal Regulations as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

■ 2. Section 9 of Special Federal Aviation Regulation (SFAR) No. 105 is revised to read as follows:

Special Federal Aviation Regulation No. 105—Operating Limitations for Unscheduled Operations at Chicago's O'Hare International Airport

* * * * *

Section 9. *Expiration.* This Special Federal Aviation Regulation expires at 9 p.m., Central Time, on March 31, 2006, unless sooner terminated.

Issued in Washington, DC, on October 27, 2005.

Marion C. Blakey,

Administrator.

[FR Doc. 05–21786 Filed 10–27–05; 4:47 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30463; Amdt. No. 3139]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 2, 2005. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 2, 2005.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Ave., SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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.*

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) amends Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in the appropriate FAA Form 8260, as modifiedby the the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), which is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Code of Federal Regulations. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on October 21, 2005.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
10/07/05	NE	LINCOLN	LINCOLN	5/9286	ILS OR LOC RWY 18, AMDT 6D.
10/07/05	OK	NORMAN	UNIVERSITY OF OKLAHOMA WESTHEIMER.	5/9300	GPS RWY 3, ORIG–B.
10/07/05	OK	NORMAN	UNIVERSITY OF OKLAHOMA WESTHEIMER.	5/9302	GPS RWY 17, AMDT 1A.
10/09/05	WA	TACOMA	TACOMA NARROWS	5/9378	GPS RWY 17, ORIG–A.
10/09/05	WA	TACOMA	TACOMA NARROWS	5/9379	GPS RWY 35, ORIG–A.
10/11/05	MO	SPRINGFIELD	SPRINGFIELD-BRANSON REGIONAL	5/9405	VOR/DME OR TACAN RWY 2, ORIG–A.
10/11/05	MO	SPRINGFIELD	SPRINGFIELD-BRANSON REGIONAL	5/9406	VOR OR TACAN RWY 20, AMDT 18B.
10/11/05	MO	SPRINGFIELD	SPRINGFIELD-BRANSON REGIONAL	5/9407	ILS OR LOC RWY 2, AMDT 17A.
10/11/05	IA	CEDAR RAPIDS	THE EASTERN IOWA	5/9439	RNAV (GPS) RWY 13, AMDT 1A.

[FR Doc. 05–21578 Filed 11–1–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Melengestrol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Ivy Laboratories, Division of Ivy Animal Health, Inc. The ANADA provides for use of a melengestrol acetate Type A medicated article with monensin and tylosin Type A medicated articles to make three-way combination Type C medicated feeds for heifers fed in confinement for slaughter.

DATES: This rule is effective November 2, 2005.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–9808, e-mail: *john.harshman@fda.gov*.

SUPPLEMENTARY INFORMATION: Ivy Laboratories, Division of Ivy Animal Health, Inc., 8857 Bond St., Overland Park, KS 66214, filed ANADA 200–375 that provides for use of HEIFERMAX 500 Liquid Premix (melengestrol acetate), RUMENSIN (monensin sodium), and TYLAN (tylosin tartrate) Type A medicated articles to make dry and liquid three-way combination Type C medicated feeds used for increased rate of weight gain and improved feed efficiency, prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*, for suppression of estrus (heat), and reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Actinomyces (Corynebacterium) pyogenes* in heifers fed in confinement for slaughter. Ivy Laboratories' ANADA 200–375 is approved as a generic copy of Pharmacia & Upjohn's NADA 138–870. The ANADA is approved as of September 19, 2005, and the regulation in 21 CFR 558.342 is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.342 [Amended]

■ 2. Section 558.342 is amended in paragraph (e)(1)(vii) in the table in the ''Sponsor'' column by adding in numerical sequence ''021641''.

Dated: October 13, 2005.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 05–21808 Filed 11–1–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–098]

Drawbridge Operation Regulations: Newtown Creek, Dutch Kills, English Kills, and Their Tributaries, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Metropolitan Avenue Bridge, mile 3.4, across English Kills at New York City, New York. Under this temporary deviation the bridge may remain in the closed position from November 14, 2005 through November 20, 2005. This temporary deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from November 14, 2005 through November 20, 2005.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Metropolitan Avenue Bridge has a vertical clearance in the closed position of 10 feet at mean high water and 15 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.801(e).

The owner of the bridge, New York City Department of Transportation (NYCDOT), requested a temporary deviation from the drawbridge operation regulations to facilitate scheduled bridge repairs.

Under this temporary deviation the NYCDOT Metropolitan Avenue Bridge may remain in the closed position from November 14, 2005 through November 20, 2005.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: October 25, 2005.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 05–21850 Filed 11–1–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–05–041]

RIN 1625–AA09

Drawbridge Operation Regulation; Tennessee River, Chattanooga, TN

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final rule.

SUMMARY: The Coast Guard is changing the regulation governing the Chief John Ross Drawbridge, mile 464.1, across the Tennessee River at Chattanooga, Tennessee. Under the temporary change, the drawbridge need not open for river traffic and may remain in the closed-to-navigation position from 8 a.m., December 1, 2005 until 8 a.m., July 1, 2006. This temporary change will allow the drawbridge to be maintained in the closed-to-navigation position to allow major repair work to be performed on the bridge.

DATES: This rule is effective from 8 a.m., December 1, 2005 through 8 a.m., July 1, 2006.

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 [CGD08–05–041] and are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building, Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2831 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 25, 2005, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Tennessee River, Chattanooga, TN in the **Federal Register** (70 FR 49900). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

On February 11, 2005, the State of Tennessee Department of Transportation requested a temporary change to the operation of the Chief John Ross Drawbridge, across the Tennessee River, mile 464.1, at Chattanooga, Tennessee to allow the drawbridge to remain in the closed-to-navigation position for seven months to perform major repairs to the bridge. The drawbridge has a vertical clearance of 58.7 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft that will be minimally impacted by the closure period. Presently, the draw opens on signal for the passage of river traffic when the vertical clearance beneath the draw is 50 feet or less. When the vertical clearance beneath the draw is more than 50 feet, at least eight hours notice is required.

The Tennessee Department of Transportation requested the drawbridge be permitted to remain in the closed-to-navigation position from 8 a.m., December 1, 2005, until 8 a.m., July 1, 2006. This temporary change to the drawbridge's schedule has been coordinated with the commercial waterway operators.

Discussion of Comments and Changes

We received no comments on the NPRM, and have made no changes from the proposed rule.

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 expects this temporary change will have minimal economic impact on commercial traffic operating on the Tennessee River. There is sufficient height, when the drawbridge is closed, to allow for the vast majority of commercial users to pass.

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 be in effect for seven months and the Coast Guard expects the impact of this action will be minimal because the existing vertical clearance of 58.7 feet above normal pool in the closed-to-navigation position will still allow vessels to transit beneath the bridge.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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.

No small entities requested Coast Guard assistance and none was given.

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 M16475.1D, 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 (32)(e) of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From 8 a.m., December 1, 2005 until 8 a.m., July 1, 2006, suspend section 117.949 and add a new section 117.T948 to read as follows:

117.T948 Tennessee River.

(a) The Chief John Ross Drawbridge, mile 464.1, at Chattanooga, Tennessee need not open for river traffic and may be maintained in the closed-to-

navigation position from 8 a.m., December 1, 2005, until 8 a.m., July 1, 2006.

(b) The draw of the Southern Railway Bridge over the Tennessee River, mile 470.7, at Hixon, Tennessee, shall open on signal when the vertical clearance beneath the draw is 50 feet or less. When the vertical clearance beneath the draw is more than 50 feet, at least eight hours notice is required. When the operator of a vessel returning through the draw within four hours informs the drawtender of the probable time of return, the drawtender shall return one half hour before the time specified and promptly open the draw on signal for the vessel without further notice. If the vessel giving notice fails to arrive within one hour after the arrival time specified, whether upbound or downbound, a second eight hours notice is required. Clearance gauges of a type acceptable to the Coast Guard shall be installed on both sides of the bridge.

Dated: October 27, 2005.

Steve Venckus,

Chief, Office of Regulations & Administrative Law, Office of the Judge Advocate General, United States Coast Guard.

[FR Doc. 05–21851 Filed 11–1–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–097]

Drawbridge Operation Regulations: Taunton River, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation for the Brightman Street Bridge, at mile 1.8, across the Taunton River between Fall River and Somerset, Massachusetts. Under this temporary deviation the bridge may remain closed from 9 p.m. on December 2, 2005 through 5 a.m. on December 12, 2005. The purpose of this temporary deviation is to facilitate scheduled bridge repairs.

DATES: This deviation is effective from December 2, 2005 through December 12, 2005.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The Brightman Street Bridge has a vertical clearance in the closed position of 27 feet at mean high water and 31 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.619(b).

The owner of the bridge, Massachusetts Highway Department, requested a temporary deviation from the drawbridge operation regulations to facilitate scheduled bridge repairs.

Under this temporary deviation the Brightman Street Bridge may remain closed from 9 p.m. on December 2, 2005 through 5 a.m. on December 12, 2005.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: October 25, 2005.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 05–21855 Filed 11–1–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–099]

Drawbridge Operation Regulations: Jamaica Bay and Connecting Waterways, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations and request for comment.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary 90-day deviation from the drawbridge operation regulations to test an alternate drawbridge operation regulation for the Beach Channel Railroad Bridge mile 6.7, across Jamaica Bay, New York. Under this temporary deviation, in effect from December 1, 2005 through February 28, 2006, the bridge may remain closed during the commuter rail rush hours in the morning and afternoon, Monday through Friday, except Federal holidays. The purpose of this temporary deviation is to test an alternate drawbridge operation schedule for 90 days and solicit comment from the public.

DATES: This deviation is effective from December 1, 2005 through February 28, 2006. Comments must reach the Coast Guard on or before March 31, 2006.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District Bridge Branch, One South Street, Battery Park Building, New York, New York, 10004, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except, Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–05–099), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Beach Channel Railroad Bridge has a vertical clearance in the closed position of 26 feet at mean high water and 31 feet at mean low water. The existing drawbridge operation regulations require the bridge to open on signal at all times.

The bridge owner, New York City Transit, requested a change to the drawbridge operation regulations to allow the bridge to remain closed during the morning and afternoon commuter rail rush hours, from 6:45 a.m. to 8:20 a.m. and 5 p.m. to 6:45 p.m., Monday through Friday, except Federal holidays.

The Coast Guard decided to test the above proposed change to the drawbridge operation regulations for a period of 90 days to help determine if this proposed rule change will help facilitate commuter rail traffic and still meet the reasonable needs of navigation.

Under this temporary 90-day deviation, effective from December 1, 2005 through February 28, 2006, the Beach Channel Railroad Bridge need not

open for the passage of vessel traffic between 6:45 a.m. and 8:20 a.m. and between 5 p.m. and 6:45 p.m., Monday through Friday, except Federal holidays.

This deviation from the operating regulations is authorized under 33 CFR 117.43.

Dated: October 25, 2005.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 05–21856 Filed 11–1–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–PA–0002; FRL–7992–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Three Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for three major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) pursuant to the Commonwealth of Pennsylvania's (Pennsylvania's or the Commonwealth's) SIP-approved generic RACT regulations. EPA is approving these revisions in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on December 2, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) ID Number R03–OAR–2005–PA–0002. All documents in the docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. Once in the system, select ''quick search,'' then key in the appropriate RME identification number. Although listed in the electronic docket, 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 RME or in hard copy 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. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Amy Caprio, (215) 814–2156, or by e-mail at *caprio.amy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On August 30, 2004, PADEP submitted a formal SIP revision that consists of source-specific operating permits and/or plan approvals issued by PADEP to establish and require RACT pursuant to the Commonwealth's SIP-approved generic RACT regulations. On April 4, 2005 (70 FR 16955), EPA published a direct final rule (DFR) approving revisions to PADEP-issued operating permits which establish and require RACT for three individual sources. The following table identifies the sources and the individual plan approvals (PAs) and operating permits (OPs) which are the subject of this rulemaking.

PENNSYLVANIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source's name	County	Plan Approval (PA #) Operating Permit (OP #)	Source type	''Major source'' pollutant
Waste Management Disposal Services of Pennsylvania, Inc. (Pottstown Landfill).	Berks; Montgomery	OP–46–0033	Turbines; Enclosed Flares	NO_X and VOC.
Waste Management Disposal Services of PA, Inc.	York	67–02047	Internal Combustion Engines; Enclosed Ground Flares.	NO_X and VOC.
Armstrong World Industries, Inc	Lancaster	36–2001	Space Heaters; Dryers; Surface Coatings	NO_X and VOC.

An explanation of the CAA's RACT requirements as they apply to the Commonwealth and EPA's rationale for approving these SIP revisions were provided in the DFR and will not be restated here.

In accordance with direct final rulemaking procedures, on April 4, 2005 (70 FR 16955), EPA also published a companion notice of proposed rulemaking on these SIP revisions inviting interested parties to comment on the DFR. Timely adverse comments were submitted on EPA's April 4, 2005 DFR.

On May 26, 2005 (70 FR 30378), due to receipt of the adverse comments on its approval of the PADEP's RACT determination for the three individual sources, EPA published a withdrawal of the DFR. A summary of those comments and EPA's responses are provided in Section II of this document.

II. Summary of Public Comments and EPA Responses

Comment

On April 16, 2005, a citizen submitted adverse comments on EPA's DFR notice approving PADEP's VOC and NO_X RACT determinations for three individual sources. The commenter states that Pennsylvania's air goes to New Jersey so the dirty air harms people in both states and RACT should be more rigorous. The commenter also states that prescribed burning in parks and wildlife areas fills the air with particulate matter which causes lung cancer, heart attacks, strokes, and asthma.

Response

The rulemaking at issue is limited in scope and addresses the CAA section 182(b)(1) RACT requirements for sources located in the ozone nonattainment area classified as moderate or above. The commenter did not comment specifically on the RACT determinations for the three individual sources and did not submit any supporting technical data or information to support that the standards for the three individual sources do not

represent RACT. Rather, the commenter makes broad statements alleging: (1) That the regulations should be more ''rigorous'' than those required under the Act, and (2) that prescribed burning in parks and wildlife areas are filling the air with particulates, in turn causing health problems and fatalities. These comments are not ''significant comments'' to which EPA needs to respond. *Whitman* v. *American Trucking Ass'n.*, 531 U.S. 457, n.2 at 471 (2001) (Under the CAA, EPA need only respond to significant comments, i.e., comments relevant to EPA's decision). Mere ''assertions that in the opinions of the commenter the Agency got it wrong,'' are not relevant comments warranting a response. *International Fabricare Inst.* v. *EPA*, 972 F.2d 384, 391 (D.C. Cir. 1992). As to the first comment, that the rules should be more ''rigorous'' than required under the Act, EPA has no authority to mandate that a State regulate more rigorously than required. Under the CAA's bifurcated scheme, the State is responsible for choosing how a source must be regulated for purposes of attaining the NAAQS and EPA's role is limited in reviewing the State's choice to ensure it meets the minimum statutory requirements. Here, as is clear from the commenter's first point, the commenter is not claiming that the regulations do not meet the statutory minimum, but rather that the statute does not require enough. EPA has no authority to modify the statute, as requested by the commenter nor does EPA have authority to require that the State to regulate more rigorously than required by the statute. The CAA is based upon ''cooperative federalism,'' which contemplates that each State will develop its own SIP, and that States retain a large degree of flexibility in choosing which sources to control and to what degree. EPA must approve a State's plan if it meets the ''minimum requirements of the CAA. *Union Elec. Co.* v. *EPA*, 427 U.S. 246, 264–266 (1976).

As to the commenter's second point, the rulemaking at issue creates additional, Federally-enforceable controls for individual sources of VOCs and NO_X. This rulemaking does not address any emissions attributable to prescribed burning in New Jersey or elsewhere. Comments regarding the potential adverse effects of prescribed burning are not relevant to this rulemaking.

III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP on January 27, 2005 to establish and require VOC and NO_X RACT for three sources pursuant to the Commonwealth's SIP-approved generic RACT regulations.

IV. 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 CAA. 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 CAA. 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 three named sources.

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 January 3, 2006. 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 approving source-specific RACT requirements for three sources in the Commonwealth of Pennsylvania 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 21, 2005.

Donald S. Welsh,

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 NN—Pennsylvania

■ 2. In Section 52.2020, the table in paragraph (d)(1) is amended by adding the entries for Waste Management Disposal Services of Pennsylvania, Inc. (Pottstown Landfill); Waste Management Disposal Services of PA, Inc.; and Armstrong Industries, Inc. at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(d) * * *

(1) * * *

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanation/§ 52.2063 citation
*	*	*	*	*	*
Waste Management Disposal Services of Pennsylvania, Inc. (Pottstown Landfill).	OP–46–0033	Berks; Montgomery ..	4/20/99; 1/27/04	11/2/05 [Insert page number where the document begins].	52.2020(d)(1)(a).
Waste Management Disposal Services of PA, Inc.	67–02047	York	4/20/99	11/2/05 [Insert page number where the document begins].	52.2020(d)(1)(a).
Armstrong World Industries, Inc.	36–2001	Lancaster	7/3/99	11/2/05 [Insert page number where the document begins].	52.2020(d)(1)(a).

* * * * *

[FR Doc. 05–21749 Filed 11–1–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–MD–0005; FRL–7992–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Repeal of NO_X Budget Program COMAR 26.11.27 and 26.11.28

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the Maryland State Implementation Plan (SIP). The revision repeals Maryland's Nitrogen Oxides (NO_X) Budget Program under COMAR 26.11.27 and 26.11.28. This action is in accordance with the Clean Air Act.

DATES: *Effective Date:* This final rule is effective on December 2, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) ID Number R03–OAR–2005–MD–0005. All documents in the docket are listed in the RME index at *http://docket.epa.gov/rmepub/.* Once in the system, select ''quick search,'' then key in the appropriate RME identification number. Although listed in the electronic docket, 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 RME or in hard copy 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. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 28, 2005, (70 FR 43818), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of a SIP revision to repeal Maryland's Ozone Transport Commission (OTC) NO_X Budget Program (OTC Program) under COMAR 26.11.27 (Post-RACT Requirements for NO_X Sources) and COMAR 26.11.28 (Policies and Procedures Relating to Maryland's NO_X Budget Program). The formal SIP revision was submitted by the Maryland Department of the Environment (MDE) on December 1, 2003.

II. Summary of SIP Revision

The SIP revision repeals Maryland's OTC Program, which implemented Maryland's portion of a regional cap and trade program to reduce transport of ozone in 12 northeastern states and the District of Columbia. Maryland's OTC Program has been superseded by its more stringent, Federally-approved NO_X Reduction and Trading Program which satisfies the NO_X SIP Call.

A detailed discussion of the rationale for EPA's approval action is provided in the NPR and will not be restated here. EPA did not receive any comments on the NPR.

III. Final Action

EPA is approving the repeal of COMAR 26.11.27 and 26.11.28 as a revision to the Maryland SIP.

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

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 January 3, 2006. 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 to approve the repeal Maryland's NO_X Budget Trading Program under COMAR 29.11.27 and 29.11.28 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.

Dated: October 24, 2005.

Donald S. Welsh,

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 V—Maryland

§ 52.1070 [Amended]

■ 2. In § 52.1070, the table in paragraph (c) is amended by removing the entries for COMAR 26.11.27 (26.11.27.01 through 26.11.27.14) and 26.11.28 (26.11.28.01 through 26.11.28.13).

[FR Doc. 05–21753 Filed 11–1–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[RME Docket Number R08–OAR–2005–UT–0006; FRL–7992–6]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Provo Attainment Demonstration of the Carbon Monoxide Standard, Redesignation to Attainment, Designation of Areas for Air Quality Planning Purposes, and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the State of Utah. On April 1, 2004, the Governor of Utah submitted an attainment demonstration and plan for the Provo metropolitan area (hereafter, Provo area) for the carbon monoxide (CO) National Ambient Air Quality Standard (NAAQS) to replace the demonstration and plan that were submitted by Governor Leavitt on July 11, 1994. The Governor's submittal also contained a request to redesignate the Provo area to attainment for the CO NAAQS and a maintenance plan which includes transportation conformity motor vehicle emission budgets (MVEB) for 2014 and 2015. The Governor also submitted revisions to: Utah's Rule R307–110–12, ''Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide,'' which incorporates the attainment demonstration, plan, and maintenance plan; Utah's Rule R307–110–31, ''Section X , Vehicle Inspection and Maintenance Program, Part A,'' which incorporates general requirements and applicability for motor vehicle emissions inspections; and Utah's Rule R307–110–34, ''Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County,'' which incorporates a revised vehicle inspection and maintenance program for Utah County. The Governor's April 1, 2004 submittal also stated that the prior July 11, 1994 submittal of Utah's Rule R307–1–4.12, ''Emissions Standards for Residential Solid Fuel Burning Devices and Fireplaces'' to restrict woodburning in Utah County, remains part of her April 1, 2004 submittal and requested that Utah's Rule R307–301, ''Oxygenated Gasoline Program,'' be eliminated from the Federally-approved SIP. We note that on September 20, 1999, the Governor submitted Utah

Rules R307–302–3 and –4, which together comprise a re-numbered and re-titled version of R307–1–4.12. The text of Rules R307–302–3 and –4 is identical to the text of Rule R307–1–4.12 that the Governor submitted on July 11, 1994. In this action, we are approving and incorporating by reference Rules R307–302–3 and –4, because these comprise the current version of the State rule. Approving these rules rather than the earlier version will avoid confusion to the public and will obviate the need for a future SIP revision merely to re-number the SIP. In the remainder of this notice, we will refer to the rule by its current numbers, unless the context dictates otherwise.

In this action, EPA is approving the Provo area's attainment demonstration and plan, the request for redesignation to attainment for the Provo area, the maintenance plan, the transportation conformity MVEBs for 2014 and 2015, the revisions to Part A of the Vehicle Inspection and Maintenance Program pertaining to general requirements and applicability, the revisions to Part D of the Vehicle Inspection and Maintenance Program pertaining to the program for Utah County, the revisions to Rule R307–110–12, the revisions to Rule R307–110–31, the revisions to Rule R307–110–34, Rules R307–302–3 and –4, and the request to remove Rule R307–301 from the Federally-approved SIP. EPA is also identifying the transportation conformity MVEB for the year 2000, which is derived from the attainment year emission inventory in the attainment plan. This action is being taken under section 110 of the Clean Air Act.

DATES: This rule is effective on January 3, 2006 without further notice, unless EPA receives adverse comment by December 2, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by RME Docket Number R08–OAR–2005–UT–0006, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://docket.epa.gov/rmepub/index.jsp.* Regional Materials in EDOCKET (RME), EPA's electronic public docket and comment system for regional actions, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *long.richard@epa.gov* and russ.tim@epa.gov.
- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 200, Denver, Colorado 80202–2466.
- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 200, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME Docket Number R08–OAR–2005–UT–0006. EPA's policy is that all comments received will be included in the public docket without change and may be made available at *http://docket.epa.gov/rmepub/index.jsp,* 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 EDOCKET, regulations.gov, or e-mail. EPA's Regional Materials in EDOCKET and federal regulations.gov website are ''nonymous 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 EDOCKET 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. For additional information about EPA's public docket visit EDOCKET online or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the Regional Materials in EDOCKET index at *http://docket.epa.gov/rmepub/index.jsp.* 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 Regional Materials in EDOCKET or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 200, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 200, Denver, Colorado 80202–2466, phone (303) 312–6479, and e-mail at: *russ.tim@epa.gov.*

SUPPLEMENTARY INFORMATION:

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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *NAAQS* mean National Ambient Air Quality Standard.

(iv) The initials *SIP* mean or refer to State Implementation Plan.

(v) The word *State* means the State of Utah, unless the context indicates otherwise.

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

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

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

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

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

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

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

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

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

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

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

II. What is the purpose of this action?

In this action, we are approving an attainment demonstration and plan for the year 2000 for the Provo area for the CO NAAQS to replace the demonstration and plan that were submitted by Governor Leavitt on July 11, 1994. As part of our action on the attainment demonstration and plan, we are identifying the transportation conformity MVEB for the year 2000. We are also approving a change in the legal designation of the Provo area from nonattainment for CO to attainment, we're approving the maintenance plan that is designed to keep the Provo area in attainment for CO for the next 10 years, we're approving the maintenance demonstration, and we're approving the maintenance plan's transportation conformity MVEBs for 2014 and 2015. All the above are addressed in the State's document entitled ''Carbon Monoxide Provisions For Provo, Section IX, Part C.6'' (hereafter, Provo CO Plan) which contains the Provo area's attainment plan and the maintenance plan and was included with the Governor's April 1, 2004 submittal.

In addition, we're approving revisions to Utah's Rule R307–110–12, that incorporates revisions to ''Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide,'' that incorporates the Provo CO Plan (''Carbon Monoxide Provisions For Provo, Section IX, Part C.6''), revisions to Utah's Rule R307–110–31, that incorporates revisions to ''Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability,'' and revisions to Utah's Rule R307–110–34, that incorporates revisions to ''Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County.'' We are also approving Utah's Rules R307–302–3 and –4, ''No Burn Periods for Carbon Monoxide'' and ''Violations,'' respectively, to restrict woodburning in Utah County, and we're approving the elimination of Utah's Rule R307–301, ''Oxygenated Gasoline Program,'' from the Federally-approved SIP.

III. What is the State's process to submit these materials to EPA?

The CAA requires States to observe certain procedural requirements in developing SIP revisions. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur before the State submits the revision to us.

A. On February 19, 2004, the Utah Air Quality Board (UAQB) held a public hearing on the Provo year 2000 attainment demonstration and plan for the CO NAAQS, the request to redesignate the Provo area to attainment for the CO NAAQS, the maintenance plan, the MVEBs for 2014 and 2015, and the revisions to Utah's Rule R307–110–12, Utah's Rule R307–110–31, and Utah's Rule R307–110–34. The UAQB adopted these SIP revisions on March 31, 2004, they became State effective on May 18, 2004, and the Governor submitted them to us on April 1, 2004.

We evaluated the Governor's submittal and concluded that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. Pursuant to section 110(k)(1)(B) of the CAA, we reviewed these SIP materials for conformance with the completeness criteria in 40 CFR part 51, Appendix V and determined that the Governor's April 1, 2004, submittal was administratively and technically complete. We sent our completeness determination on July 2, 2004, in a letter from Robert E. Roberts, Regional Administrator, to Governor Olene Walker.

B. On June 23, 1998, the UAQB held a public hearing for the revisions to Utah's Rules R307–302–3 and 4, to restrict woodburning in Utah County. The UAQB adopted these SIP revisions on August 13, 1998, they became State effective on September 15, 1998, and the Governor submitted them to us on September 20, 1999.

We evaluated the Governor's submittal of Utah's Rules R307–302–3 and –4, and determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. By operation of law under the provisions of section 110(k)(1)(B) of the CAA, the Governor's September 20, 1999, submittal was deemed complete on March 20, 2000.

IV. Brief History of the Provo Area and the CO NAAQS

The Provo area was first designated nonattainment for the CO NAAQS on March 3, 1978 (43 FR 8964.) This designation was assigned by EPA pursuant to the requirements of the 1977 amendments to the Clean Air Act (CAA). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Pub. L. 101–549, 104 Stat.

2399, codified at 42 U.S.C. 7401–7671q). In response to Clean Air Act Amendments of 1990, we designated the Provo area as nonattainment for CO under section 107(d)(1)(C) of the CAA, because the area had been designated as nonattainment before November 15, 1990. The Provo area was classified as a ''moderate'' CO nonattainment area with a design value greater than 12.7 parts per million (ppm). See 56 FR 56694, November 6, 1991. CO nonattainment areas classified as ''moderate'' were expected to attain the CO NAAQS as expeditiously as practical, but no later than December 31, 1995. Further information regarding this classification and the accompanying requirements are described in section 187 of the CAA and in the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990.'' See 57 FR 13498, April 16, 1992.

The provisions of section 187 of the CAA applicable to areas classified as ''moderate'' with a design value greater than 12.7 ppm, such as the Provo area, required that a SIP revision be submitted to EPA by November 15, 1992 that included: (1) A 1990 base year emission inventory, (2) a vehicle miles traveled (VMT) forecast, (3) contingency provisions that would go into place if the VMT forecast was exceeded or if the area failed to attain the CO NAAQS by December 31, 1995, (4) a motor vehicle inspection and maintenance (I/M) program, (5) periodic emission inventories beginning in September, 1995, continuing until the area is redesignated to attainment, and, (6) an attainment demonstration. In addition, section 211(m) of the CAA also required the implementation of an oxygenated fuels program. With respect to the oxygenated fuels requirement, section 211(m)(2)(B) of the CAA set the Federally-required oxygenate level at 2.7% oxygen by weight.

On July 11, 1994, the Governor submitted a revision to the Utah SIP (hereafter, July 11, 1994 submittal) that included a CO attainment demonstration, plan, and several other SIP revisions applicable to the Provo area. Among other provisions, the attainment plan relied on an enhanced motor vehicle inspection and maintenance (I/M) program, that was to be implemented by January 1, 1996, and the 2.7% oxygenated gasoline program. However, the commitment to implement an enhanced I/M program was not definite. Due to several technical and legal issues with the attainment demonstration (notably the State's failure to implement the enhanced I/M program and miscalculation of credit for woodburning emission reductions), EPA never took action on the July 11, 1994 submittal's attainment demonstration, enhanced I/M program, contingency measures, VMT forecasting provisions, or woodburning requirements (Utah's Rule R307–1–4.12.)

Over time, however, we did approve certain SIP revisions or materials relevant to the Provo area. These were the 1990 base year emission inventory (see 60 FR 33745, June 29, 1995) the 1993 periodic emission inventory (see 63 FR 18122, April 14, 1998) the 1996 periodic emission inventory (see 65 FR 63546, October 24, 2000) revisions to the State's rule R307–8 [1] ''Oxygenated Gasoline Program'' for the implementation of a 2.7% program (59 FR 55585, November 8, 1994) the 3.1% oxygen by weight gasoline program for Utah County (66 FR 14078, March 9, 2001) the improved basic I/M program for Utah County that was designed to satisfy the applicable requirements of both the CAA and section 348 of the National Highway Safety Designation Act (NHSDA) of 1995 (interim final approval 62 FR 31349, June 9, 1997; final approval 67 FR 57744, September 12, 2002), and the determination of attainment of the CO NAAQS for the Provo area along with the change from a 3.1% to a 2.7% by weight oxygenated gasoline program (67 FR 59165, September 20, 2002).

Additional historical information is also provided in section IX.C.6.a of the Provo CO Plan.

V. The Provo Area's Attainment/Maintenance Plan (Provo CO Plan): Contents

As noted above, the Provo CO Plan contains both an attainment plan and a maintenance plan and is divided into six sections: an introduction section (IX.C.6.a), a CO monitoring section (IX.C.6.b), the attainment plan section with the attainment demonstration (IX.C.6.c), the maintenance plan section (IX.C.6.d), the maintenance demonstration (IX.C.6.e), and a section addressing transportation conformity (IX.C.6.f). We have reviewed the Provo CO Plan with respect to the relevant requirements of sections 107, 110, 175A, 176, 187, and 211 of the CAA and EPA policy and guidance and believe that approval of the Provo CO Plan is warranted. Below are our descriptions and analysis of how the Provo CO Plan meets the necessary provisions referenced above.

[1] In 1998, the State re-numbered rule R307–8 ''Oxygenated Gasoline Program'' as R307–301 and changed the title to ''Utah and Weber Counties: Oxygenated Gasoline Program.''

VI. EPA's Evaluation of the Introduction and Monitoring Sections of the Provo CO Plan

A. Introduction Section (IX.C.6.a)

This section of the Provo CO Plan provides a discussion of the CO NAAQS, the Provo area's geographic setting and basic demographic information, and a brief history of the Provo designation history similar to that provided in our section IV above.

B. CO Monitoring Network Section (IX.C.6.b)

As described in 40 CFR § 50.8, the national primary ambient air quality standard for carbon monoxide is 9 parts per million (10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year. 40 CFR 50.8 continues by stating that the levels of CO in the ambient air shall be measured by a reference method based on 40 CFR part 50, Appendix C and designated in accordance with 40 CFR part 53 or an equivalent method designated in accordance with 40 CFR part 53. Attainment of the CO standard is not a momentary phenomenon based on short-term data. Instead, we consider an area to be in attainment if each of the CO ambient air quality monitors in the area doesn't have more than one exceedance of the CO standard over a one-year period. 40 CFR § 50.8 and 40 CFR part 50, Appendix C. If any monitor in the area's CO monitoring network records more than one exceedance of the CO standard during a one-year calendar period, then the area is in violation of the CO NAAQS.

As described in section IX.C.6.b, the Provo CO Plan is based on an analysis of quality assured ambient air quality monitoring data that are relevant to the attainment demonstration and the maintenance demonstration. As presented in section IX.C.6.b of the Provo CO plan, ambient air quality monitoring data for calendar years 1994 through 2003 show a measured exceedance rate of the CO NAAQS of 1.0 or less per year, per monitor, in the Provo nonattainment area. Further, we have reviewed ambient air quality data from 2004 and the first calendar quarter of 2005 and the Provo area shows continuous attainment of the CO NAAQS from 1994 to present.

All of the data discussed above were collected and analyzed as required by EPA (see 40 CFR § 50.8 and 40 CFR part 50, Appendix C) and have been archived by the State in our Air Quality System (AQS) national database.

VII. EPA's Evaluation of the Clean Air Act Requirements Relevant to the Provo Area

Section IX.C.6.c.1 of the Provo CO Plan includes Table 3 which presents certain requirements that the State has referenced from sections 172 and 187 of the CAA for a ''moderate'' CO nonattainment area with a design value greater than 12.7 ppm. Our evaluation of how the Provo area met the relevant CAA requirements is as follows:

A. Base year emission inventory. The State submitted a 1990 base year CO emissions inventory for the Provo area on July 11, 1994 which met the requirements of sections 172(c)(3) and 187(a)(1) of the CAA. We approved this inventory on June 29, 1995 (60 FR 33745). The Governor's April 1, 2004 submittal contains a new base year emission inventory for the year 2000 that we are approving with this action. A further description of this inventory is provided below in section IX.

B. Vehicle Miles Traveled (VMT). Section 187(a)(2)(A) of the CAA requires a forecast of VMT in the nonattainment area for each year before the year in which the plan projects the NAAQS for CO to be attained in the area. The July 11, 1994 submittal projected attainment of the CO NAAQS by December 31, 1995 and the State met this CAA requirement with its submittal of projected VMT, for 1994, 1995, and 1996, in a letter dated March 28, 1995. As noted earlier, we determined the Provo area attained the CO NAAQS by December 31, 1995, in our action of September 20, 2002 (67 FR 59165).

C. Contingency provisions. Section 187(a)(3) requires the submittal of measures to be implemented in the event that the forecasted VMT, required by CAA section 187(a)(2)(A), is exceeded or the area does not attain the CO NAAQS by the applicable attainment date, which in this case was December 31, 1995. In the event these contingency provisions are triggered, they are to be implemented without any further action by the State. With the July 11, 1994 submittal, the State adopted as a contingency measure an increase in the oxygen content of gasoline, for the Provo area, from 2.7% by weight to 3.1% by weight. The State's oxygenated gasoline rule stated that the 3.1% by weight program would be triggered by either the actual VMT exceeding the forecasted VMT or if an enhanced I/M program was not implemented by January 1, 1996. In actuality, both conditions arose; the State did not implement an enhanced I/M program in the Provo area by January 1, 1996 (or for that matter, at all) and the Provo area exceeded the forecasted VMT levels. Based on the above, the Provo area began a 3.1% by weight program in 1996. However, as we noted earlier, the Provo area attained the CO NAAQS by December 31, 1995 with only the benefit of a 2.7% program (see 67 FR 59165, September 20, 2002).

Generally, EPA does not insist on CAA section 187(a)(3) contingency measures for an area being redesignated to attainment. See 57 FR 13564, April 16, 1992. This is because the area must have already attained the standard to be redesignated, and section 175A of the Act requires that the maintenance plan have its own set of contingency measures.

D. Basic I/M. Section 187(a)(4) of the CAA includes a ''Savings Clause for Vehicle Inspection and Maintenance Provisions of the State Implementation Plan.'' The reference in this section of the CAA relates back to section 182(a)(2)(B) which essentially directs States to the implementation of a two-speed idle check Basic I/M program that is at least as effective as the Federal Basic I/M performance standard as specified in 40 CFR 51.352. The State met this CAA obligation by submitting an improved I/M program revision, on March 15, 1996, that addressed both the requirements of the CAA and the National Highway System Designation Act (NHSDA) of 1995. As noted in our 2002 final rule approval for this program (67 FR 5774, September 12, 2002), Utah County's improved vehicle I/M program exceeds the Federal Basic I/M performance standard established in 40 CFR 51, subpart S (''Inspection/Maintenance Program Requirements for CO non-attainment areas.'') We gave interim final approval of this I/M program SIP revision on June 9, 1997 (62 FR 31349) and final approval on September 12, 2002 (67 FR 5774).

E. Periodic inventory. Section 187(a)(5) requires the submittal of a periodic emission inventory, for the nonattainment area, every three years until the area is redesignated to attainment. The State submitted a 1993 periodic CO emission inventory for the Provo area on November 12, 1997. We approved the 1993 periodic inventory on April 14, 1998 (63 FR 18122). The State submitted a 1996 periodic CO emission inventory for the Provo area on June 14, 1999. We approved the 1996 periodic CO emission inventory on October 24, 2000 (65 FR 63546). The Governor's April 1, 2004 SIP submittal included a CO emission inventory for 2000 as a component of the year 2000 attainment demonstration. We consider this inventory sufficient to address the 1999 periodic inventory requirement.

F. Enhanced Vehicle Inspection and Maintenance. Section 187(a)(6) of the CAA requires ''moderate'' CO nonattainment areas to implement an enhanced I/M program as is provided in section 182(c)(3) of the CAA. The provisions of section 182(c)(3), however, only apply to nonattainment areas located in urbanized areas with a 1980 census of 200,000 or more. Because the 1980 census for the Provo (and Orem) urbanized area was 169,699, an enhanced I/M program was not required for the Provo area.

G. Attainment Demonstration and Specific Annual Emission Reductions. Section 187(a)(7) of the CAA requires ''moderate'' CO nonattainment areas to submit ''* * * a demonstration that the plan as revised will provide, for attainment of the carbon monoxide NAAQS by the applicable attainment date and provisions for such specific annual emission reductions as are necessary to attain the standard by that date.'' To address this CAA requirement, the Governor's July 11, 1994 submittal contained an attainment demonstration that was based on dispersion modeling using the Urban Airshed Model (UAM) and the CAL3QHC intersection ''hotspot'' model. As we noted in section IV above, the July 11, 1994 submittal's attainment plan was not Federally-approvable due to both legal and technical issues. However, to address this outstanding CAA requirement, on April 1, 2004, the Governor submitted a new attainment plan that demonstrates attainment in the year 2000. This new attainment plan is described in sections VIII and IX below. Its attainment demonstration is based on UAM–AERO and CAL3QHC–R modeling.

H. Oxygenated fuels. Section 211(m) of the CAA requires the implementation of an oxygenated gasoline program in any CO area designated as nonattainment and with a design value of 9.5 ppm or greater. As this CAA requirement applied to the Provo area, the State submitted a SIP revision on November 9, 1992 for the implementation of an oxygenated gasoline program in the Provo area. We approved this SIP revision on November 8, 1994 (59 FR 55585). In addition, we also approved revisions to the State's oxygenated gasoline program that involved several definition changes, average and maximum oxygen content, and recordkeeping, with our action of March 9, 2001 (66 FR 14078). We approved the most recent revisions on September 20, 2002 (67 FR 59165).

VIII. EPA's Evaluation of the Provo Area's 2000 Attainment Demonstration and Maintenance Plan Modeling

Section IX.C.6.c and section IX.c.6.e of the Provo CO Plan along with Volume 12, Section 4 of the State's TSD contain thorough descriptions of the attainment demonstration and maintenance plan dispersion modeling. Major components of these activities are briefly described below.

A. Dispersion Modeling

1. Model Approach Selected. The State selected the EPA-approved photochemical model Urban Airshed Model with Aerosol (UAM–AERO) chemistry to estimate the background CO concentrations for the modeling domain. Meteorological fields for input into the UAM–AERO model were produced with the Diagnostic Wind Model (DWM). Emissions data were processed with the Sparse Matrix Operator Kernel Emissions (SMOKE) modeling system. The UAM–AERO dispersion modeling for carbon monoxide was performed in accordance with EPA's June, 1992 modeling guidance entitled ''Guideline for Regulatory Application of the Urban Airshed Model for Areawide Carbon Monoxide.'' To evaluate the impacts at high volume/congested intersections, the State used the CAL3QHC–R model. The incremental CO concentration impact results from the application of the CAL3QHC–R model (a more thorough discussion of the CAL3QHC–R model is included in section 4.a.5 of Volume 12 of the State's TSD) were then added to the UAM–AERO background concentration for a total predicted CO concentration at a selected intersection. The above modeling effort was performed by the State in accordance with the State's modeling protocol, that was approved by EPA, which is located in Volume 12, section 4.b.i of the State's TSD.

2. Modeling Domain. Section 4.a.3.2 of Volume 12, of the State's TSD discusses the UAM–AERO modeling domain. The domain covers portions of 13 counties in northern Utah and is 134 kilometers (km) east to west by 226 km north to south. This is the same modeling domain that was developed by the State for the UAM–AERO application for the development of the Utah PM_{10} SIP revision. The State determined that using the same modeling domain for both SIP revisions was a simpler task rather than developing a smaller, specific domain for the CO modeling for the Provo area. EPA agreed with this approach after our review of the State's modeling protocol which is included in section 4.b.i of Volume 12 of the State's TSD. For both the SMOKE emissions preprocessor and UAM–AERO, the modeling resolution was at a 2 km by 2km grid. A more in-depth discussion of the modeling domain is located in Section 4.a.3.2 of Volume 12, of the State's TSD.

3. Episode Selection. Initially, the State evaluated six episodes from 1990 to 2001. As explained in the modeling protocol, in section 4.b.i of Volume 12 of the State's TSD, and in section 4.a.2 of Volume 12 of the State's TSD, two CO episodes were selected that met the overall requirements for necessary meteorological data, recent emission inventory data, and our modeling guidance. These episodes were January 12th to January 15th of 2000 and January 6th to January 9th of 2001. Additional discussion on episode selection can be found in sections 4.a.2 and 4.b.i of Volume 12 of the State's TSD.

4. Modeling Emission Inventories. The State prepared modeling emission inventories for the 2000 and 2001 episodes and for the maintenance demonstration years of 2005, 2006, 2008, 2011, 2014, and 2015 [2]. Emission totals by category for each of these years are presented in sections IX.C.6.c.(3), IX.C.6.e.(1) Table 12, and IX.C.6.e.(2) Table 13 of the Provo CO Plan and in Table VIII–1 below.

TABLE VIII–1.—SPECIFIC CO EMISSION INVENTORIES FOR THE PROVO AREA OF THE MODELING DOMAIN

[All in tons per day of CO]

Source category	2000	2001	2005	2006	2008	2011	2014	2015
Point Sources	0.03	0.03	0.04	0.04	0.04	0.04	0.05	0.05
Area Sources	1.28	1.28	1.18	1.17	1.10	1.03	0.97	0.96
On-road Mobile Sources	59.44	65.38	70.44	72.10	59.69	55.75	52.88	52.46
Non-road Sources	3.05	3.05	3.05	3.03	2.97	2.90	2.86	2.87
Totals	63.80	69.74	74.71	76.34	63.80	59.72	56.76	56.34

Our review of the 2000 episode and 2000 attainment demonstration modeling shows that it should be approved. We have also reviewed the 2001 episode modeling and the maintenance demonstration modeling (for 2005, 2006, 2008, 2011, 2014, and 2015) and have concluded this modeling should also be approved. The State has adopted acceptable control strategies and has performed modeling that meets our modeling guidance requirements for the CO NAAQS. Modeling based on adopted and existing control measures demonstrates attainment of the CO NAAQS in 2000 and maintenance through 2015. Our evaluation of the 2000 attainment plan appears in section IX below and our evaluation of the maintenance demonstration appears in section X below.

IX. EPA's Evaluation of the Provo Area's 2000 Attainment Demonstration and Plan

The State's 2000 attainment plan for the Provo area is based on relevant data for the calendar year 2000; specifically for a winter-time episode. The monitoring data and episode selection are described further above in section VIII and in Volume 12, Section 4.b.ii of the State's TSD. Components of the attainment plan discussed here involve the base case emission inventory for 2000, the control measures in place in 2000, and the results of the attainment demonstration episode modeling.

A. Base Case Emission Inventory for 2000

As described in section IX.C.6.c.(3) of the Provo CO Plan, the State prepared a winter-time episode CO emission inventory that would serve both the purpose of a base case inventory for the 2000 attainment plan and as the attainment year inventory for the maintenance plan. The State used demographic data that was provided by

[2] The State also prepared and modeled emission inventories for 2004 (to consider the elimination of the oxygenated gasoline program) and 2007 (at the specific request of Mountainland Association of Governments.)

the metropolitan planning organization (MPO): the Mountainland Association of Governments (MAG). MAG provided the necessary demographic data, the applicable transportation data, and prepared the on-road mobile sources portion of the inventory. This information and associated analyses are provided in Volume 10, Section 3.b.i of the State's TSD. Area source emissions and non-road source emissions are discussed in Volume 10 and Volume 11 of the State's TSD. Section IX.C.6.c.(3)(a) of the Provo CO Plan states there are no major point sources of CO within the Provo City limits (the non-major point source CO emissions were included with the area sources). The State notes that with the development of the 1994 SIP submittal, two major point sources of CO emissions existed in Utah County, but outside the Provo City municipal boundary. With the development of the 1994 SIP submittal, the State performed an analysis that indicated these two major point sources did not have a significant impact on the Provo nonattainment area. This particular analysis is further described in Volume 1, Section 2 of the State's TSD. The State indicates in section IX.C.6.c.(3)(a) that emissions from these two major point sources were input into the UAM–AERO modeling domain and that the intersection modeling analyses with CAL3QHC–R were paired in time and space with the output from UAM–AERO.

The 2000 base-year episode inventory is presented in section IX.C.6.c(3) ''Table 4. 2000 Provo Attainment-Episode Inventory'' of the Provo CO Plan and the emissions are: Point sources = 0.03 tons per day (tpd) of CO, Area sources = 1.28 tpd of CO, Non-road = 3.05 tpd of CO, On-road mobile = 59.44 tpd of CO. The total is 63.80 tpd of CO.

B. Control Strategies To Attain the CO NAAQS

The 2000 base case inventory accounts for control measures that were in place for the Provo area at that time. These State control measures, that are described below and in section IX.C.6.c.(4)(c) of the Provo CO Plan, were: (1) Oxygenated gasoline, (2) motor vehicle I/M, and (3) residential woodburning controls. These State control measures were in addition to the Federally-mandated regulations for motor vehicle exhaust (or tailpipe) emissions and the Federally-mandated regulations for exhaust emissions from non-road engines.

1. Oxygenated Gasoline Program. As described in section IX.C.6.c.(4)(c)(i) of the Provo CO Plan, the oxygenated gasoline program for 2000 involved a winter season control period of November through February, with a minimum requirement for 3.1% by weight oxygen content for gasoline sold in Utah County.

2. Gasoline Vehicle Emissions Inspection and Maintenance (I/M) Program. As described in section IX.C.6.c.(4)(c)(ii) of the Provo CO Plan, model year 1968 through 1995 cars and trucks fueled with gasoline, propane, or natural gas, owned by residents of Utah County, including the Provo area, were subject to an annual two-speed idle test program. Vehicles of model year 1996 and newer underwent an On-Board Diagnostics (OBD) inspection. The I/M program was primarily a de-centralized test-and-repair program. We gave interim final approval to this I/M program on June 9, 1997 (62 FR 31349). Based on the NHSDA, we determined that Utah County's I/M program was equivalent to a test-only program with our final approval on September 12, 2002 (67 FR 57744).

3. Residential Wood-burning Controls. As described in section IX.C.6.c.(4)(c)(iii) of the Provo CO Plan, the State initiated controls on residential woodburning stoves and fireplaces with the adoption of Rule R307–1–4.12, which was included with the July 11, 1994 submittal. Further information on this particular rule (now re-numbered R307–302–3 and –4) is provided in section XIV below and in Volume 1, Section 2 of the State's TSD. The rule provided for a ''Red'' status, or mandatory no-burn, when ambient CO concentrations reached 6.0 ppm and the forecasted meteorological conditions were such that carbon monoxide levels might continue to increase.

C. Attainment Demonstration Episode Modeling for 2000

As described in section IX.C.6.c.(4) of the Provo CO Plan, the attainment demonstration modeling for 2000 was performed using UAM–AERO dispersion model along with the CAL3QHC–R intersection model. The modeling was performed according to the Modeling Protocol, which is contained in Volume 12, Section 4.b.i of the State's TSD.

1. Modeling Analysis. In section IX.C.6.c.(4)(a) of the Provo CO Plan, the State indicates that the technical evaluation of the CO concentrations in the Provo area was completed in 1994 and concluded that the CO problem was occurring primarily at one intersection on University Avenue in Provo (see Volume 1, Section 2 of the State's TSD.) The 1994 analysis also considered the potential influence of two large point sources of CO (Geneva Steel and Pacific States Cast Iron Pipe), but concluded that intersections in the Provo area were not being significantly affected by emissions from these sources. The State also states that detailed meteorological analysis of both the observation record and prognostic modeling (for use with UAM–AERO) showed that specific meteorological conditions accompanied the elevated CO concentrations. The State indicates that analysis of the CO ambient air quality monitoring database for the Provo area, along with the meteorological record over the last decade, essentially reaches the same conclusions as the original 1994 analysis: the elevated CO concentrations at specific intersections are locally produced by traffic and not influenced by emissions from point sources. We note that Section 2 of the Episode Selection Document (Volume 12, Section 4.b.ii of the State's TSD) describes in detail the analysis used to select the episode for the year 2000 attainment demonstration.

2. Episode Modeling and Attainment Demonstration for 2000. Volume 12, Section 4.a, ''UAM–CAL3QHC Modeling'' of the State's TSD describes in detail the use of the UAM–AERO dispersion model to generate the background, gridded CO values. This section of the TSD also describes the use of the CAL3QHC–R intersection model to calculate the contribution of CO emissions from automobiles at particular intersections. The predicted CO concentrations from these two models are summed to derive an estimate of the total CO concentrations that can be expected at specific intersections.

As required by us, the State evaluated the three intersections with the highest VMT counts and the three intersections with the lowest Level Of Service (LOS) in the Provo area. These intersections are: (1) University Avenue and University Parkway, (2) 1230 North (West Bulldog Boulevard) and University Avenue, (3) 1230 North (West Bulldog Boulevard) and 500 West (State Street), (4) 500 West and Center Street, and (5) 500 North and University Avenue with University Avenue and Center Street. The last entry is actually two intersections—these two intersections are the nearest major intersections to the ambient CO air quality monitor located at 363 North University Avenue. These intersections and the modeling results are presented in Table 5 in the Provo CO Plan and in Table IX–1 below.

The State modeled the 2000 episode with control strategies that were in

place at that time. Results of the modeling are presented in Table 5 of the Provo CO Plan and in our Table IX–1 below and indicate there were no modeled exceedances of the CO NAAQS (values are less than 9.0 ppm) at the specified intersections. The State also states in section IX.C.6.c.(4)(a) of the Provo CO Plan that there were no modeled exceedances of the CO NAAQS throughout the modeling domain. Therefore, the State has satisfactorily demonstrated attainment of the CO NAAQS for 2000 for the Provo area. Additional information about the 2000 episode modeling is provided in section VIII above and in Volume 12, Section 4.b.i of the State's TSD.

TABLE IX–1.—2000 EPISODE PREDICTED 8-HOUR CO CONCENTRATIONS

Intersection location	Concentration in ppm (UAM & CAL3QHC–R)
University Ave. & University Parkway	8.3
1230 North & University Ave	7.1
1230 North & 500 West	7.7
500 West & Center St	8.5
500 North & University Ave. & Center St	8.6

X. EPA's Evaluation of the Provo Area's Redesignation Request and Maintenance Plan

We have reviewed the Provo area's redesignation request and maintenance plan (section IX.C.6.d of the Provo CO Plan) and believe that approval of the request is warranted, consistent with the requirements of CAA section 107(d)(3)(E). Under the CAA, we can change designations if acceptable data are available and if certain other requirements are met. See CAA section 107(d)(3)(D). Section 107(d)(3)(E) of the CAA provides that the Administrator may not promulgate a redesignation of a nonattainment area to attainment unless:

(i) The Administrator determines that the area has attained the national ambient air quality standard;

(ii) The Administrator has fully approved the applicable implementation plan for the area under CAA section 110(k);

(iii) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and,

(v) The State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

Before we can approve the redesignation request, we must decide that all applicable SIP elements have been fully approved. Approval of the applicable SIP elements may occur simultaneously with final approval of the redesignation request. That's why we are also approving the 2000 attainment demonstration and plan, and the revisions to Utah's Rule R307–110–12, Rule R307–110–31, Rule R307–110–34, and R307–1–4.12 (now re-numbered R307–302–3 and –4). The following are descriptions of how the section 107(d)(3)(E) requirements are being addressed.

A. Redesignation Criterion: The Area Must Have Attained the Carbon Monoxide (CO) NAAQS

Section 107(d)(3)(E)(i) of the CAA states that for an area to be redesignated to attainment, the Administrator must determine that the area has attained the applicable NAAQS. As described in 40 CFR 50.8, the national primary ambient air quality standard for carbon monoxide is 9 parts per million (10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year. 40 CFR 50.8 continues by stating that the levels of CO in the ambient air shall be measured by a reference method based on 40 CFR part 50, Appendix C and designated in accordance with 40 CFR part 53 or an equivalent method designated in accordance with 40 CFR part 53. As stated above in section VI and as described in section IX.C.6.b of the Provo CO Plan, ambient air quality monitoring data for calendar years 1994 through 2003 show a measured exceedance rate of the CO NAAQS of 1.0 or less per year, per monitor, in the Provo nonattainment area. Further, we have reviewed ambient air quality data from 2004 and the first calendar quarter of 2005 and the Provo area shows continuous attainment of the CO NAAQS from 1994 to present. All of the data discussed above were collected and analyzed as required by EPA (see 40 CFR 50.8 and 40 CFR part 50, Appendix C) and have been archived by the State in our Air Quality System (AQS) national database. Therefore, we believe the Provo area has met the first component for redesignation: demonstration of attainment of the CO NAAQS. We note that the State of Utah has also committed, in the maintenance plan, to continue the necessary operation of the CO monitors in compliance with all applicable federal regulations and guidelines.

B. Redesignation Criterion: The Area Must Have Met All Applicable Requirements Under Section 110 and Part D of the CAA

To be redesignated to attainment, section 107(d)(3)(E)(v) requires that an area must meet all applicable requirements under section 110 and part D of the CAA. We interpret section 107(d)(3)(E)(v) to mean that for a redesignation to be approved by us, the State must meet all requirements that applied to the subject area prior to or at the time of submission of a complete redesignation request. In our evaluation of a redesignation request, we don't need to consider other requirements of the CAA that became due after the date of submission of a complete redesignation request.

1. CAA Section 110 Requirements

On August 15, 1984, we approved revisions to Utah's SIP as meeting the requirements of section 110(a)(2) of the CAA (see 45 FR 32575). Although section 110 of the CAA was amended in 1990, most of the changes were not substantial. Thus, we have determined that the SIP revisions approved in 1984 continue to satisfy the requirements of section 110(a)(2). In addition, we have analyzed the SIP elements we are approving as part of this action, and we have determined they comply with the relevant requirements of section 110(a)(2).

2. Part D Requirements

Before the Provo ''moderate'' CO nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, whether classified or nonclassifiable. Subpart 3 of part D contains specific provisions for ''moderate'' CO nonattainment areas.

The relevant subpart 1 requirements are contained in sections 172(c) and 176. Our General Preamble (see 57 FR 13529, 13533, April 16, 1992) provides EPA's interpretations of the CAA requirements for ''moderate'' CO areas.

The General Preamble (see 57 FR 13530, et seq.) provides that the applicable requirements of CAA section 172 are 172(c)(3) (emissions inventory), 172(c)(5) (new source review permitting program), 172(c)(7) (the section 110(a)(2) air quality monitoring requirements), and 172(c)(9) (contingency measures). It is also worth noting that we interpreted the requirements of sections 172(c)(2) (reasonable further progress—RFP) and 172(c)(6) (other measures) as being irrelevant to a redesignation request because they only have meaning for an area that is not attaining the standard. See EPA's September 4, 1992, memorandum entitled, ''Procedures for Processing Requests to Redesignate Areas to Attainment'', and the General Preamble, 57 FR at 13564, dated April 16, 1992. Finally, the State has not sought to exercise the options that would trigger sections 172(c)(4) (identification of certain emissions increases) and 172(c)(8) (equivalent techniques). Thus, these provisions are also not relevant to this redesignation request.

Regarding the requirements of sections 172(c)(3) (inventory) and 172(c)(9) (contingency measures) and how the Provo area met these requirements, please refer to our discussions above in section VII. A., ''Base year inventory,'' concerning section 187(a)(1) of the CAA, and section VII. C., ''Contingency provisions,'' concerning section 187(a)(3) of the CAA, which are provisions of subpart 3 of Part D of the CAA that establish the same requirements as sections 172(c)(3) and 172(c)(9).

For the section 172(c)(5) New Source Review (NSR) requirements, the CAA requires all nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions will not result from any new or modified stationary major sources and a general offset rule. The State of Utah has a fully-approved NSR program (60 FR 22277, May 5, 1995.) The State also has a fully approved Prevention of Significant Deterioration (PSD) program (56 FR 29436, June 27, 1991) that will apply, instead of nonattainment NSR, if we approve the redesignation to attainment.

For the CAA section 172(c)(7) provisions (compliance with the CAA section 110(a)(2) Air Quality Monitoring Requirements), our interpretations are presented in the General Preamble (57 FR 13535). CO nonattainment areas are to meet the ''applicable'' air quality monitoring requirements of section 110(a)(2) of the CAA. We have determined that the Provo area has met the applicable air quality monitoring requirements of section 110(a)(2) of the CAA. See our descriptions in section VI above.

Section 176 of the CAA contains requirements related to conformity. Although EPA's regulations (see 40 CFR 51.390) require that states adopt transportation conformity provisions in their SIPs for areas designated nonattainment or subject to an EPA-approved maintenance plan, we have decided that a transportation conformity SIP is not an applicable requirement for purposes of evaluating a redesignation request under section 107(d) of the CAA. This decision is reflected in EPA's 1996 approval of the Boston carbon monoxide redesignation. (See 61 FR 2918, January 30, 1996.)

The relevant Subpart 3 provisions were created when the CAA was amended on November 15, 1990. The new CAA requirements for ''moderate'' CO areas, such as Provo, required that the SIP be revised to include a 1990 base year emissions inventory (CAA section 187(a)(1)), vehicle miles traveled tracking (CAA section 187(a)(2)(A)), contingency provisions (CAA section 187(a)(3)), corrections to existing motor vehicle inspection and maintenance (I/M) programs (CAA section 187(a)(4)), periodic emission inventories (CAA section 187(a)(5)), enhanced motor vehicle I/M program (CAA section 187(a)(6)), and a modeled attainment demonstration with specific annual emissions reductions (CAA section 187(a)(7)). Title II, Part A of the CAA also requires the implementation of an oxygenated fuels program (CAA section 211(m)(1)).

These CAA Subpart 3 provisions have been met for the Provo area. Our discussions appear earlier in this action. Please refer to the sections of our action listed as follows for the appropriate discussion: (a) 1990 base year emissions inventory requirement of section 187(a)(1) of the CAA, see section VII.A., (b) vehicle miles traveled tracking requirement of section 187(a)(2)(A) of the CAA, see section VII.B, (c) contingency provisions of section 187(a)(3) of the CAA, see section VII.C, (d) corrections to existing motor vehicle inspection and maintenance (I/M) programs as required by section 187(a)(4) of the CAA, see section VII.D, (e) periodic emission inventory requirement of section 187(a)(5) of the CAA, see section VII.E, (f) enhanced motor vehicle I/M program requirement of section 187(a)(6) of the CAA, see section VII.F, and (g) the requirement of section 187(a)(7) of the CAA for a modeled attainment demonstration with specific annual emissions reductions, see section VII.G. Regarding the CAA Title II, Part A requirement for the implementation of an oxygenated fuels program to meet the requirements of section 211(m)(1) of the CAA, see section VII.H.

C. Redesignation Criterion: The Area Must Have a Fully Approved SIP Under Section 110(k) of the CAA

Section 107(d)(3)(E)(ii) of the CAA states that for an area to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the area under section 110(k).

As noted above, EPA previously approved (or sufficiently explained otherwise) SIP revisions based on the pre-1990 CAA as well as SIP revisions required under the 1990 amendments to the CAA. In this action, EPA is approving the Provo area's 2000 attainment demonstration and plan, the revisions to Rule R307–110–12, the revisions to Rule R307–110–31, the revisions to Rule R307–110–34, Rules R307–302–3 and –4, and the request to eliminate the Federal applicability of Rule R307–301. Thus, with our final approval of these SIP revisions, we will have fully approved the Provo area's CO element of the SIP under section 110(k) of the CAA.

D. Redesignation Criterion: The Area Must Show That the Improvement in Air Quality Is Due to Permanent and Enforceable Emissions Reductions

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from

implementation of the applicable implementation plan, implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

The CO emissions reductions for the Provo area, that are further described in section IX.C.6.c(4)(c) ''Control Strategies to Attain the NAAQS'' of the attainment plan, were achieved primarily through the State's basic I/M program, improved I/M program, woodburning controls, oxygenated gasoline program, and the Federal Motor Vehicle Control Program (FMVCP).

The four State control strategies listed above are fully discussed in section VIII.B above. Regarding FMVCP, these are Federal provisions that require vehicle manufacturers to meet more stringent vehicle emission limitations for new vehicles in future years. These emission limitations are phased in (as a percentage of new vehicles manufactured) over a period of years. As new, lower emitting vehicles replace older, higher emitting vehicles (''fleet turnover''), emission reductions are realized for a particular area such as Provo.

We have evaluated the various State and Federal control measures, the original 1990 base year emission inventory (60 FR 33745, June 29, 1995), the 1993 periodic emission inventory (63 FR 18122, April 14, 1998), the 1996 periodic emission inventory (65 FR 63546, October 24, 2000), and the 2000 attainment year inventory provided with the State's April 1, 2004 submittal and have concluded that the improvement in air quality in the Provo nonattainment area has resulted from emission reductions that are permanent and enforceable.

E. Redesignation Criterion: The Area Must Have a Fully Approved Maintenance Plan Under CAA Section 175A

Section 107(d)(3)(E)(iv) of the CAA provides that for an area to be redesignated to attainment, the Administrator must have fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA.

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the promulgation of the redesignation, the State must submit a revised maintenance plan that demonstrates continued attainment for the subsequent ten-year period following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for adoption and implementation, that are adequate to assure prompt correction of a violation. In addition, we issued further maintenance plan interpretations in the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498, April 16, 1992), ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental'' (57 FR 18070, April 28, 1992), and the EPA guidance memorandum entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' from John Calcagni, Director, Air Quality Management Division, Office of Air Quality and Planning Standards, to Regional Air Division Directors, dated September 4, 1992.

In this **Federal Register** action, EPA is approving the maintenance plan for the Provo nonattainment area because we have determined, as detailed below, that the State's maintenance plan meets the requirements of section 175A and is consistent with the documents referenced above. Our analysis of the pertinent maintenance plan requirements, with reference to the Governor's April 1, 2004, submittal, is provided as follows:

1. Emissions Inventories—Attainment Year and Projections

EPA's interpretations of the CAA section 175A maintenance plan requirements are generally provided in the General Preamble (see 57 FR 13498, April 16, 1992) and the September 4, 1992, Calcagni Memorandum referenced above. Under our interpretations, areas seeking to redesignate to attainment for CO may demonstrate future maintenance of the CO NAAQS either by showing that future CO emissions will be equal to or less than the attainment year emissions or by providing a modeling demonstration. However, under the CAA, many areas (such as Provo) were required to submit a modeled attainment demonstration to show that reductions in emissions would be sufficient to attain the applicable NAAQS. For these areas, the maintenance demonstration is to be based on the same level of modeling (see the September 4, 1992, Calcagni Memorandum). As noted above in section IX, for the Provo area, this involved the use of UAM–AERO in conjunction with intersection modeling using the CAL3QHC–R model.

The maintenance plan that the Governor submitted on April 1, 2004, included comprehensive inventories of CO emissions for the Provo area. These inventories include emissions from stationary point sources, area sources, non-road mobile sources, and on-road mobile sources. The State used the 2000 attainment year inventory and included interim-year projections with a final maintenance year of 2015. More detailed descriptions of the 2000 attainment year inventory and the projected inventories are documented in the maintenance plan in section IX.C.6.e. and in Volumes 9, 10, 11, and 12 of the State's TSD. The State's submittal contains detailed emission inventory information that was prepared in accordance with EPA guidance. Summary emission figures from the 2000 attainment year and the projected years are provided in Table X–1 below.

TABLE X–1.—CO EMISSION INVENTORIES FOR THE PROVO AREA PORTION OF THE MODELING DOMAIN

[All in tons per day of CO]

Source category	2000	2001	2005	2006	2008	2011	2014	2015
Point Sources	0.03	0.03	0.04	0.04	0.04	0.04	0.05	0.05
Area Sources	1.28	1.28	1.18	1.17	1.10	1.03	0.97	0.96
On-road Mobile Sources	59.44	65.38	70.44	72.10	59.69	55.75	52.88	52.46
Non-road Sources	3.05	3.05	3.05	3.03	2.97	2.90	2.86	2.87
Totals	63.80	69.74	74.71	76.34	63.80	59.72	56.76	56.34

2. Demonstration of Maintenance

The September 4, 1992, Calcagni Memorandum states that where modeling was relied on to demonstrate maintenance, the plan is to contain a summary of the air quality concentrations expected to result from the application of the control strategies. Also, the plan is to identify and describe the dispersion model or other air quality model used to project ambient concentrations.

For the Provo CO maintenance demonstration, the State used UAM–AERO in conjunction with concentrations derived from the CAL3QHC–R intersection model. This was the same level of modeling the State used for the 2000 Provo CO SIP attainment demonstration, discussed in section IX.C.6.c of the Provo CO Plan and in section IX above, to meet the requirements of section 187(a)(7) of the CAA. The UAM–AERO and CAL3QHC–R models were applied to both the 2000 and 2001 episodes and were used to predict concentrations in 2000, 2001, 2005, 2006, 2008, 2011, 2014, and 2015 for the intersections identified for the 2000 attainment demonstration (see section IX.C.6.c of the Provo CO Plan and section IX above.) This modeling effort was performed consistently with our modeling guidance.

The results of the State's modeling for the 2000 and 2001 episodes and projections for 2004, 2005, 2006, 2007, 2008, 2011, 2014 and 2015 are presented in section IX.C.6.e.2 of the maintenance plan and in the Volume 12 of the State's TSD, and are reproduced in Table X–2 and Table X–3 below. We note that the State also modeled emissions for 2004 and 2007. The 2004 modeling was performed to confirm there would be no adverse impacts from eliminating the oxygenated gasoline program in that year and the 2007 modeling was performed at the specific request of Mountainland Association of Governments (MAG), which is the metropolitan planning organization (MPO) for the Provo area.

TABLE X–2.—2000 EPISODE AND PROJECTIONS, 8-HOUR MAXIMUM CO CONCENTRATIONS IN PPM

[UAM–AERO and CAL3QHC–R combined results]

Intersection location	2000	2004	2005	2006	2007	2008	2011	2014	2015
University Ave. & University Parkway	8.3	7.9	7.9	8.1	6.5	6.5	6.0	5.6	5.5
1230 North & University Ave	7.1	6.6	6.6	6.8	5.5	5.5	5.0	4.7	4.6
1230 North & 500 West	7.7	7.2	7.2	7.3	5.9	5.9	5.4	5.0	4.9
500 West & Center St	8.5	8.0	8.0	8.2	6.5	6.5	6.1	5.6	5.6
500 North & University Ave. & Center St	8.6	8.4	8.3	8.5	6.9	6.9	6.3	5.9	5.8

TABLE X–3.—2001 EPISODE AND PROJECTIONS, 8-HOUR MAXIMUM CO CONCENTRATIONS IN PPM

[UAM–AERO and CAL3QHC–R combined results]

Intersection location	2001	2004	2005	2006	2007	2008	2011	2014	2015
University Ave. & University Parkway	7.5	8.7	8.7	7.3	5.8	5.8	5.4	4.9	4.9
1230 North & University Ave	6.7	5.8	5.8	5.8	4.7	4.7	4.3	4.0	3.9
1230 North & 500 West	5.8	5.2	5.2	5.2	4.2	4.2	3.8	3.5	3.4
500 West & Center St	8.3	8.2	8.1	8.2	6.7	6.7	6.1	5.7	5.7
500 North & University Ave. & Center St	9.2	8.9	8.8	8.9	7.3	7.3	6.7	6.2	6.1

As presented in Table 15 of the Provo CO Plan, and our Table X–3 above, the 500 North and University Avenue and Center Street shows a modeled exceedance of the 8-hour CO NAAQS (9.0 ppm) in 2001 (predicted value of 9.2 ppm). The State notes in section IX.C.6.e.(2)(b) of the Provo CO Plan that the highest actual monitored 8-hour CO value in 2001 was 7.5 ppm. The State also notes that this CO value was recorded at a monitor that is only three blocks from this particular intersection. The State concludes that, because the monitored data for 2001 indicate no exceedances of the CO NAAQS for the Provo area and the modeled CO values for all future years are less than the 8-hour CO NAAQS (9.0 ppm), maintenance of the CO NAAQS is demonstrated.

We consider the State's position to be reasonable regarding the 9.2 ppm value in 2001 and agree with the conclusion regarding the maintenance demonstration as it begins in 2004. As additional support, we note that an area is considered to be in attainment for the 8-hour CO NAAQS when no more than one value above 9 ppm is recorded at any single monitor in the same calendar year. Further, to account for instrument uncertainties, data are rounded to the nearest 1 ppm before comparison to the NAAQS. Thus, measured values up to 9.4 ppm are rounded to 9 ppm and not considered to exceed the CO NAAQS.

Therefore, we accept the State's modeling results, which predict no 8-hour CO values above 9 ppm after 2001 for all projection years, as evaluated with both the 2000 and 2001 episodes, and find that maintenance of the CO NAAQS is satisfactorily demonstrated through 2015. Further information regarding the modeling strategy and results is included in Volume 12, section 4.b.ii of the State's TSD.

3. Monitoring Network and Verification of Continued Attainment

Continued attainment of the CO NAAQS in the Provo area depends, in part, on the State's efforts to track indicators throughout the maintenance period. This requirement is met in section IX.C.6.e.(5) of the Provo CO Plan. In section IX.C.6.e.(5)(a) the State commits to track emission inventory data and compare that information to the emission inventory data in the Provo CO Plan. In section IX.C.6.e.(5)(b) commits to continue the operation of the CO monitors in the Provo area and in section IX.C.6.e.(5)(c), to annually review this monitoring network and make changes as appropriate.

Based on the above, we are approving these commitments as satisfying the

relevant requirements and note that this approval will render the State's commitments federally enforceable.

4. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures.

As stated in section IX.C.6.e.(4)(a) of the Provo CO Plan, the contingency measures for the Provo area will be triggered by a violation of the CO NAAQS.

The State, in coordination with the UAQB, will initiate a process to begin evaluating potential contingency measures no more than 30 days after being notified that a violation of the CO NAAQS has occurred. The State will present recommendations to the UAQB within 45 days of notification. The UAQB will then hold a public hearing to consider the contingency measures recommended by the State, along with any other contingency measures that the UAQB believes may be appropriate to effectively address the violation of the CO NAAQS. The necessary contingency measures will be adopted and implemented before November 1 of the beginning of the next winter season.[3]

The potential contingency measures that are identified in section IX.C.6.e.(4)(c) of the Provo CO Plan include (a) implementation of a 2.7% oxygenated fuels program in Utah County from November 1st through the end of February, and (b) a return to annual vehicle emissions inspections. A more complete description of the triggering mechanism and these contingency measures can be found in section IX.C.6.e.(4)(b) and (c) of the Provo CO Plan.

Based on the above, we find that the contingency plan provided in the Provo CO Plan meets the requirements of section 175A(d) of the CAA.

5. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, Utah has committed to submit a revised maintenance plan eight years after our approval of the redesignation. This provision for revising the maintenance plan is contained in section IX.C.6.e.(5)(f) of the Provo CO Plan.

6. Revisions to Existing Control Measures for the Maintenance Plan

The Governor's submittal letter of April 1, 2004, stated that because the maintenance demonstration showed the CO NAAQS could be maintained through the next 10 years (*i.e.*, 2015), the Governor was requesting that EPA remove the Federal applicability of the oxygenated gasoline program for Utah County. This request was further described in section IX.C.6.e.(3) of the Provo CO Plan. There the State indicates that the UAM–AERO and CAL3QHC–R modeling did not include any emission reductions credits for an oxygenated gasoline program beginning in 2004 and extending through 2015. In addition, section IX.C.6.e.(3) states that due to better durability of emissions control equipment and a lower failure rate of newer vehicles, the State is switching from an annual to a biennial vehicle inspection requirement for vehicles less than six years old. The State's modeling accounts for this change and still demonstrates maintenance. We agree with these revisions to the Provo area's CO control measures. The modeling results presented in Tables 14 and 15 in the Provo CO Plan, and presented above in our Tables X–2 and X–3, demonstrate maintenance of the CO NAAQS from 2004 through 2015, even with these changes.

Based on our review and evaluation of the components of the Provo CO Plan, as discussed in our items X.A through X.E above, we have concluded that the State has met the necessary requirements in order for us to approve the Provo CO Plan's redesignation request from nonattainment to attainment for CO, the maintenance demonstration, and the required maintenance plan components.

XI. EPA's Evaluation of the Transportation Conformity Requirements

One key provision of our conformity regulation requires a demonstration that emissions from the transportation plan and Transportation Improvement Program are consistent with the emissions budget(s) in the SIP (40 CFR sections 93.118 and 93.124). The emissions budget is defined as the level of mobile source emissions relied upon in the attainment or maintenance demonstration to maintain compliance with the NAAQS in the nonattainment or maintenance area. The rule's requirements and EPA's policy on emissions budgets are found in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62193–96) and in the sections of the rule referenced above. In addition, section 93.118 of our conformity rule requires that motor vehicle emissions budgets (MVEB) must be established for the last year of a maintenance plan and may be established for any other years deemed appropriate by the State.

Based on the above, for transportation plan analysis years after the last year of the maintenance plan (in this case 2015 for the Provo CO Plan), a conformity determination must show that emissions are less than or equal to the maintenance plan's specified MVEB for the last year of the maintenance plan. EPA's conformity regulation (40 CFR 93.124) also allows the implementation plan to quantify explicitly the amount by which motor vehicle emissions could be higher while still demonstrating compliance with the maintenance requirement. The implementation plan can then allocate some or all of this additional ''safety margin'' to the emissions budget(s) for transportation conformity purposes.

Section IX.C.6.f of the Provo CO Plan briefly describes the applicable transportation conformity requirements, provides MVEB information for 2014 and 2015, identifies ''safety margin,'' indicates that the UAQB allocated some of the ''safety margin'' to the 2014 and 2015 MVEBs, and provides UAM–AERO/CAL3QHC–R modeling that includes the 2014 and 2015 MVEBs for intersections noted above.

A. MVEB for 2014

In Table 13 of the Provo CO Plan, the State identified CO emissions from point sources of 0.05 tons per day (tpd), emissions from area sources of 0.97 tpd, emissions from non-road sources of 2.86 tpd, and emissions from on-road mobile sources of 52.88 tpd for 2014. Modeling with UAM–AERO and CAL3QHC–R, as described above, predicted maintenance of the CO NAAQS at the evaluated intersections as presented in Tables 14 and 15 of the Provo CO maintenance plan. For the 2014 MVEB, the State increased the on-road mobile source emissions from 52.88 tpd to 70.44 tpd, thus producing a ''safety margin'' of 17.56 tpd. In section IX.C.6.f of the Provo CO Plan, this 17.56 tpd of ''safety margin'' is allocated to the 2014 MVEB producing the 70.44 tpd MVEB. The State then applied the UAM–AERO and CAL3QHC–R models to the above-noted intersections with point, area, non-road, and on-road mobile sources emissions discussed above and demonstrated there would be no exceedances of the 8-hour CO NAAQS. The modeling results for

[3] Section IX.C.6.e.(4)(b) of the maintenance plan indicates that implementation of either the oxygenated gasoline program or annual vehicle inspections will require some lead time. We do not view this statement as modifying the commitment to implement any contingency measures before November 1 of the beginning of the next winter season following a violation. Our decision to approve the maintenance plan is partially based on this commitment.

the 2014 MVEB appear in Table 16 (2000 episode) and 17 (2001 episode) of the Provo CO Plan and are reproduced below in Table XI–1 and Table XI–2.

B. MVEB for 2015 and Beyond

In Table 13 of the Provo CO Plan, the State identified CO emissions from point sources of 0.05 tons per day (tpd), emissions from area sources of 0.96 tpd, emissions from non-road sources of 2.87 tpd, and emissions from on-road mobile sources of 52.46 tpd in 2015. Modeling with UAM–AERO and CAL3QHC–R, as described above, predicted maintenance of the CO NAAQS at the evaluated intersections as presented in Tables 14 and 15 of the Provo CO Plan. For the 2015 and beyond MVEB, the State increased the on-road mobile source emissions from 52.46 tpd to 72.10 tpd, thus producing a ''safety margin'' of 19.64 tpd. In section IX.C.6.f of the Provo CO Plan, this 19.64 tpd of ''safety margin'' is allocated to the 2015 and beyond MVEB producing the 72.10 tpd MVEB. The State then applied the UAM–AERO and CAL3QHC–R models to the above-noted intersections with point, area, non-road, and on-road mobile sources emissions discussed above and demonstrated there would be no exceedances of the 8-hour CO NAAQS. The modeling results for the 2015 MVEB appear in Table 16 (2000 episode) and 17 (2001 episode) of the Provo CO Plan and are reproduced below in Table XI–1 and Table XI–2.

TABLE XI–1.—2000 EPISODE PREDICTED CONFORMITY MVEB 8-HOUR CO CONCENTRATIONS

Intersection location	Concentration in ppm (UAM & CAL3QHC–R) for 2014	Concentration in ppm (UAM & CAL3QHC–R) for 2015 and beyond
University Ave. & University Parkway	6.3	6.3
1230 North & University Ave	5.4	5.4
1230 North & 500 West	5.7	5.8
500 West & Center St	6.3	6.3
500 North & University Ave. & Center St	6.6	6.5

TABLE XI–2.—2001 EPISODE PREDICTED CONFORMITY MVEB 8-HOUR CO CONCENTRATIONS

Intersection location	Concentration in ppm (UAM & CAL3QHC–R) for 2014	Concentration in ppm (UAM & CAL3QHC–R) for 2015 and beyond
University Ave. & University Parkway	5.2	5.3
1230 North & University Ave	4.4	4.4
1230 North & 500 West	3.8	3.8
500 West & Center St	5.9	5.9
500 North & University Ave. & Center St	6.6	6.6

Pursuant to section 93.118(e)(4) of EPA's transportation conformity rule, as amended, EPA must determine the adequacy of submitted mobile source emissions budgets. EPA reviewed the Provo CO Plan's emission budgets for 2014 and 2015 and beyond for adequacy using the criteria in 40 CFR 93.118(e)(4), and determined that the budgets were adequate for conformity purposes. EPA's adequacy determination was made in a letter to the Utah Division of Air Quality June 30, 2004, and was announced in the **Federal Register** on July 2, 2004 (69 FR 43412). As a result of this adequacy finding, the 2014 budget and the 2015 and beyond budget took effect for conformity determinations in the Provo area on July 17, 2004. However, we note that we are not bound by this determination in acting on the Provo CO Plan.

We have concluded that the State has satisfactorily demonstrated continued maintenance of the CO NAAQS while using transportation conformity MVEBs of 70.44 tpd for 2014 and 72.10 tpd for 2015 and beyond. Therefore, we are approving the transportation conformity MVEB of 70.44 tpd of CO, for the Provo attainment/maintenance area, for 2014 and the transportation conformity MVEB of 72.10 tpd of CO for 2015 and beyond.

C. Attainment Year MVEB

In addition to the requirements relating to the maintenance plan MVEBs discussed above, EPA's regulations at 40 CFR 93.101 define the term ''motor vehicle emissions budget'' as ''that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision * * * for a certain date for the purpose of * * * demonstrating attainment * * * of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.'' The State's attainment plan for Provo CO falls within EPA's definition of a control strategy implementation plan revision (see 40 CFR 93.101). By definition, the attainment year—in this case 2000—is a budget year under EPA's conformity regulations. Because the Provo CO plan does not explicitly identify a MVEB for 2000, the budget value defaults to the inventory value for on-road mobile sources for that year. That value, and thus the MVEB, for 2000 is 59.44 tpd of CO. This 2000 budget applies to conformity analysis years as specified in 40 CFR 93.118.

XII. EPA's Evaluation of the Rule R307–110–31 Revisions

The revisions to Rule R307–110–31 involve the incorporation into the Utah Rules revisions to Section X of the Utah SIP entitled ''Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.'' The revisions to Part A involve the removal of a historical statement in the ''Utah I/M program history and general authority,'' the reference to the 2002 State legislative changes to Utah Code Annotated, Section 41–6–163.7 to allow I/M inspections to go from an annual to an every-other-year testing program for vehicles less than six years old, updated census figures for 1980, 1990, and 2000 in section 2, ''Applicability,'' and an amendment to section 2, ''Applicability,'' under ''Test

Frequency'' to reflect the changes noted above to Section 41–6–163.7 of the Utah Code Annotated. Upon our approval, these revisions to Rule R307–110–31 that were adopted by the UAQB on March 31, 2004 (State effective on May 18, 2004, submitted by the Governor to us on April 1, 2004) will become part of the Federally-enforceable SIP.

We have evaluated and determined that the revisions to Rule R307–110–31 involving ''Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability'' of the Utah SIP described above are acceptable and we are approving them. In particular, we note that the State accounted for the changes to the rule in its maintenance demonstration, and was still able to demonstrate maintenance of the CO NAAQS. Furthermore, we have concluded that the change from an annual to a biennial program for vehicles less than six years old will not impact attainment of any other NAAQS. We have based our conclusion on our evaluation of the State-submitted supplemental document to the TSD entitled ''Technical Support Document for the Utah SIP, Section X, Vehicle Inspection & Maintenance Program, Part A, General Requirements, April, 2004 Final'' and on our own analysis which is included in the docket for this action. The program change will not interfere with any other applicable requirements of the CAA. Thus, the requirements of section 110(l) of the CAA are met.

XIII. EPA's Evaluation of the Rule R307–110–34 Revisions

The revisions to Rule R307–110–34 involve the incorporation into the Utah Rules of revisions to Section X of the Utah SIP entitled ''Vehicle Inspection and Maintenance Program, Part D, Utah County.'' The revisions to Part D section 1. ''I/M performance standard'' involve the removal of certain historical statements, the removal of references to EPA's MOBILE5a emission factor model, and the addition of new language reflecting EPA's September 12, 2002 approval (67 FR 57744) of Utah County's ''National Highway System Designation Act (NHSDA) of 1995'' improved I/M program. Revisions to Part D also involve the removal of the obsolete language in section 2, ''Network type,'' that dealt with enhanced I/M provisions for Utah County and changes to section 5, ''Vehicle Coverage,'' to go from an annual to an every-other-year testing program for vehicles less than six years old. In addition, revisions to Part D include the ''Vehicle Emission Inspection/Maintenance Program'' ordinance and appendices for Utah County as adopted by the Utah County Board of County Commissioners on June 10, 2003, to replace the Utah County I/M ordinance and appendices that were in Part D dated December 29, 1999. Upon our approval, these revisions to Rule R307–110–34 that were adopted by the UAQB on March 31, 2004 (State effective on May 18, 2004, submitted by the Governor to us on April 1, 2004) will become part of the Federally-enforceable SIP.

We note that in section 12.2 of Appendix 1 and in section 7.0 of Appendix 4 of the June 10, 2003 Utah County I/M ordinance it is stated that the adopted cut-points for motor vehicle emissions inspections contained in Appendix C to Appendix 1 (of the ordinance) shall remain in effect until changed by the Utah County Commission or Director. In addition, section 12.2 of Appendix 1 and section 7.1 of Appendix 4 also state that the maximum concentration of cut-points shall be determined by the County Commission or the Director to meet the NAAQS established by EPA. The maintenance demonstration, however, is based on the cut-points contained in Appendix C to Appendix 1 of the County's I/M ordinance. Given this, any decision by the County Commission or the Director to change the cut-points in Appendix C to Appendix 1 shall only be Federally-effective upon EPA's approval of such change as a revision to the SIP. This is consistent with the interpretation of the Utah Division of Air Quality as expressed in an August 2, 2005 letter from Richard W. Sprott, Director, Utah Division of Air Quality, to Jerry Grover of the Utah County Commission.

We have evaluated and determined that the revisions to Rule R307–110–34 involving ''Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County'' of the Utah SIP described above are acceptable and we are approving them. As discussed in section XII above, we note that the State accounted for the changes to the rule in its maintenance demonstration, and was still able to demonstrate maintenance of the CO NAAQS. Furthermore, we have concluded that the change from an annual to a biennial program for vehicles less than six years old will not impact attainment of any other NAAQS. We have based our conclusion on our evaluation of the State-submitted supplemental document to the TSD entitled ''Technical Support Document for the Utah SIP, Section X, Vehicle Inspection & Maintenance Program, Part A, General Requirements, April, 2004 Final'' and on our own analysis which is included in the docket for this action. The program change will not interfere with any other applicable requirements of the CAA. Thus, the requirements of section 110(l) of the CAA are met.

XIV. EPA's Evaluation of Rules R307–302–3 and –4

Utah's Rules R307–302–3 and –4 are entitled ''No-Burn Periods for Carbon Monoxide'' and ''Violations'' respectively. The UAQB held a public hearing on the revisions to Utah's Rule R307–302–3 and –4, to restrict woodburning in Utah County, on June 23, 1998. The UAQB adopted these SIP revisions on August 13, 1998, they became State effective on September 15, 1998, and the Governor submitted them to us on September 20, 1999. These revisions to Rules R307–302–3 and –4 address the requirements and mechanism for implementing mandatory ''no-burn'' periods, for residential solid fuel devices and fireplaces, when specified conditions occur which could lead to formation of elevated levels of carbon monoxide.

We note the Governor's submittal letter of April 1, 2004, requested that EPA approve the July 11, 1994, woodburning rule revisions contained in Utah's prior Rule R307–1–4.12 in conjunction with our action on the Provo CO Plan. As stated earlier in this action, the Governor's September 20, 1999 submittal of Utah Rules R307–302–3 and –4, comprises a re-numbered and re-titled version of R307–1–4.12. The text of Rules R307–302–3 and –4 is identical to the text of Rule R307–1–4.12 that the Governor submitted on July 11, 1994.

We have evaluated these revisions to Utah's Rules R307–302–3 and –4. We find them acceptable and are approving them.

XV. EPA's Evaluation of the Removal of Rule R307–301

As stated in the Governor's April 1, 2004 submittal letter, because the Provo CO maintenance plan was able to demonstrate maintenance of the CO NAAQS for the next 10 years (i.e., 2015) without the use of an oxygenated gasoline program, the Governor requested that EPA remove the State's Rule R307–301 from the Federally-approved SIP. Utah's Rule R307–301 will, however, remain as a contingency measure as noted in section IX.C.6.e.(4) of the Provo CO Plan.

EPA is allowed to approve this elimination of the Federally-approved oxygenated gasoline program for Utah County and the Provo area based on section 211(m)(6) of the CAA which states:

''ATTAINMENT AREAS—Nothing in this subsection shall be interpreted as requiring an oxygenated gasoline program in an area which is in attainment for carbon monoxide, except that in a carbon monoxide nonattainment area which is redesignated as attainment for carbon monoxide, the requirements of this subsection shall remain in effect to the extent such program is necessary to maintain such standard thereafter in the area.''

The State has satisfied the above requirements of section 211(m)(6) as follows:

A. The Provo area is in attainment for the CO NAAQS. EPA made a determination of attainment for the CO NAAQS for the Provo area on September 20, 2002 (67 FR 59165.) In addition, as is presented in the Provo CO Plan, ambient air quality data have been archived in AQS that show the Provo area has been in attainment for the CO NAAQS for the period of 1994–2003. We have evaluated the ambient air quality data in AQS and have concluded the Provo area continued to attain the CO NAAQS in 2004 and the first calendar quarter of 2005. Therefore, the area has been in continuous attainment for the CO NAAQS from 1994 to the present. Further information on relevant ambient air quality data is presented in section VI.B and X.A above and in section IX.C.6.a of the Provo CO Plan.

B. The State has provided an adequate demonstration that shows, beginning in 2004, the oxygenated gasoline program is not needed to maintain the CO NAAQS in the Provo area. The State's CO maintenance plan for the Provo area addresses this requirement. As described in section IX.C.6.e of the Provo CO Plan, the State used EPA's MOBILE6.2 emission factor model to calculate on-road mobile source emissions, without any emission reduction benefits from an oxygenated gasoline program, for 2004, 2005, 2006, 2007, 2008, 2011, 2014 and 2015. These on-road mobile source emissions, along with projected point, area, and non-road emissions were then modeled with UAM–AERO and CAL3QHC–R. As discussed in section IX.C.6.e of the Provo CO Plan and in section X above, maintenance of the CO NAAQS is demonstrated for the time period 2004 through 2015 with the elimination of the oxygenated gasoline program beginning in 2004. Therefore, elimination of the oxygenated gasoline program will not interfere with continued maintenance of the CO NAAQS. In addition, in accordance with section 110(l) of the CAA, we find that elimination of the oxygenated gasoline program will not interfere with attainment of any other NAAQS or any other applicable requirement of the CAA. Because the oxygenated gasoline program is a wintertime program, its elimination will have no impact on attainment/maintenance of the ozone NAAQS, which in Utah is a summertime concern. Regarding particulate matter, relevant information and data indicate that the elimination of the oxygenated gasoline program will have no impact on attainment/maintenance of either the PM_{10} or the $PM_{2.5}$ NAAQS.

Consistent with the foregoing, we are approving the elimination of Utah's Rule R307–301 from the Federally-approved SIP.

XVI. Consideration of Section 110(l) of the CAA

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA. The Provo CO Plan's attainment demonstration and plan, the maintenance plan, the revisions to the general requirements and applicability for automotive I/M, the revisions to the automotive I/M provisions for Utah County, the revisions addressing woodburning restrictions, and the elimination of the Federal applicability of the oxygenated gasoline program for Utah County will not interfere with attainment, reasonable further progress, or any other applicable requirement of the CAA. Further detail is provided in sections XII, XIII, and XV of this action.

XVII. Final Action

In this action, EPA is approving the Provo area's CO attainment demonstration and plan for 2000, the request for redesignation from nonattainment to attainment for CO for the Provo area, the Provo area's maintenance plan, the transportation conformity CO motor vehicle emission budgets for the years 2014 and 2015, the revisions to Rule R307–110–12 (which incorporates the Provo CO Plan into the Utah Rules,) the revisions to Rule R307–110–31 (which incorporates the revisions to ''Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability'' into the Utah Rules), the revisions to Rule R307–110–34 (which incorporates the revisions to ''Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County'' into the Utah Rules) [4], and the request to eliminate the Federal applicability of Rule R307–301, all as submitted by the Governor on April 1, 2004. We are also approving Rules R307–302–3 and –4 which were submitted by the Governor on September 20, 1999. As part of this action, EPA is also identifying the Provo CO area motor vehicle emission budget of 59.44 tpd of CO for the year 2000.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, 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 January 3, 2006 without further notice unless the Agency receives adverse comments by December 2, 2005. If the EPA receives adverse comments, 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. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

XVIII. Statutory and Executive Order Reviews

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

[4] Please note the condition EPA expresses in section XIII of this action, that any decision by the Utah County Board of Commissioners to change cut-points will not be effective to change the cut-points EPA is approving in Section X, Part D, Appendix C to Appendix 1 of the SIP absent EPA approval as a SIP revision.

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.*).

The Congressional Review Act, 5 U.S.C. section 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. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the 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 January 3, 2006. 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 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: October 24, 2005.

Robert E. Roberts,

Regional Administrator, Region VIII.

■ 40 CFR parts 52 and 81 are 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 TT—Utah

■ 2. Section 52.2320 is amended by adding paragraph (c)(62) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(62) Revisions to the Utah State Implementation Plan, ''Section IX, Part C.6, Carbon Monoxide Provisions for Provo,'' as submitted by the Governor on April 1, 2004; revisions to UAC R307–110–12, ''Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide,'' as submitted by the Governor on April 1, 2004; revisions to the Utah State Implementation Plan, ''Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability,'' as submitted by the Governor on April 1, 2004; revisions to UAC R307–110–31, ''Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability,'' as submitted by the Governor on April 1, 2004; revisions to the Utah State Implementation Plan, ''Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County,'' as submitted by the Governor on April 1, 2004; revisions to UAC R307–110–34, ''Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County,'' as submitted by the Governor on April 1, 2004; the removal of UAC R307–301 from the Federally-approved SIP as requested by the Governor on April 1, 2004; and UAC R307–302–3, and UAC R307–302–4, ''No-Burn Periods for Carbon Monoxide'' and ''Violations,'' respectively, as submitted by the Governor on September 20, 1999.

(i) Incorporation by reference.

(A) UAC R307–110–12, as adopted by the Utah Air Quality Board on March 31, 2004, effective May 18, 2004. This incorporation by reference of UAC R307–110–12 only extends to the following Utah SIP provisions and excludes any other provisions that UAC R307–110–12 incorporates by reference: ''Section IX, Part C.6, Carbon Monoxide Provisions for Provo,'' adopted by the Utah Air Quality Board on March 31, 2004, effective May 18, 2004.

(B) UAC R307–110–31, ''Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability,'' as adopted by the Utah Air Quality Board on March 31, 2004, effective May 18, 2004.

(C) UAC R307–110–34, ''Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County,'' as adopted by the Utah Air Quality Board on March 31, 2004, effective May 18, 2004.

(D) UAC R307–302–3, ''No-Burn Periods for Carbon Monoxide,'' as adopted by the Utah Air Quality Board on August 13, 1998, effective September 15, 1998.

(E) UAC R307–302–4, ''Violations,'' as adopted by the Utah Air Quality Board on August 13, 1998, effective September 15, 1998.

(ii) Additional materials.

(A) An August 2, 2005 letter from Richard Sprott, Utah Department of Environmental Quality, to Jerry Grover, Utah County Commission, addressing limits on Utah County authority to revise vehicle emission cut-points.

(B) An August 19, 2005 letter from Richard Sprott, Utah Department of Environmental Quality, to Richard Long, EPA Region VIII, providing supplemental Technical Support Documentation to Volumes 11 and 12 of the State's Technical Support Document for the Provo area's carbon monoxide attainment demonstration and maintenance plan that was submitted by Governor Walker on April 1, 2004.

(C) A September 8, 2005 letter from Jan Miller, Utah Department of Environmental Quality, to Kerri Fiedler, EPA Region VIII, to address typographical errors in ''Section X, Part D, Utah County Vehicle Emissions Inspection and Maintenance Program'' that was submitted by Governor Walker on April 1, 2004.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.345, the table entitled ''Utah-Carbon Monoxide'' is amended by revising the entry for ''Provo Area'' to read as follows:

§ 81.345 Utah.

* * * * *

UTAH—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Provo Area				
Utah County (part) city of Provo	1/3/06	Attainment.		
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 05–21837 Filed 11–1–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0031; FRL–7992–8]

RIN 2060–AK50

National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: EPA is amending the national emission standards for hazardous air pollutants (NESHAP) for primary aluminum reduction plants. The amendments will revise the emission limit for polycyclic organic matter (POM) applicable to one potline subcategory. The amendments will revise the compliance provisions to clarify the dates by which all plants must meet the NESHAP requirements, and to specify the time allowed to demonstrate initial compliance for a new or reconstructed potline, anode bake furnace, or pitch storage tank as well as an existing potline or anode bake furnace that has been shutdown and subsequently restarted. We are making these amendments to reduce compliance uncertainties and improve understanding of the NESHAP requirements.

EFFECTIVE DATE: November 2, 2005.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. OAR–2002–0031. All documents in the docket at listed in the EDOCKET index at *http://docket.epa.gov/edkpub/index.jsp.* Although listed in the index, some information is not publicly available, i.e., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center, Docket ID Number OAR–2002–0031, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Lee Jones, EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Metals Group (C439–02), Research Triangle Park, NC 27711, telephone number (919) 541–5251, fax number (919) 541–3207, e-mail address: *Jones.DonnaLee@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. The regulated categories and entities affected by the NESHAP include:

Category	NAICS code [1]	Examples of regulated entities
Industry	331312	Establishments primarily engaged in producing primary aluminum by electrolytically reducing alumina.
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.840 of subpart LL (NESHAP for Primary Aluminum Reduction Plants). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 (General Provisions).

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's final amendments will also be available on the Worldwide Web through the Technology Transfer Network (TTN). Following signature, a copy of the final amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final amendments is achievable only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by January 3, 2006. Under CAA section 307(d)(7)(B), only an objection to the amendments which was raised with reasonable specificity during the period for public comment can be raised during judicial review. Under CAA section 307(b)(2), the requirements that are established by this final action may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. Background
II. Summary of the Final Amendments
A. What Is the Final POM Emission Limit for VSS2 Potlines?
B. What are the final changes to the compliance provisions?
III. Response to Comments on the Proposed Amendments
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. Background

Section 112 of the CAA establishes a technology-based program to reduce stationary source emissions of hazardous air pollutants (HAP) from major sources. Major sources of HAP are those that have the potential to emit greater than 10 tons/year of any one HAP or 25 tons/year of any combination of HAP. The CAA requires the national emission standards to reflect the maximum degree of reduction in HAP emissions that is achievable. This level of control is commonly known as the maximum achievable control technology (MACT).

We issued the NESHAP for primary aluminum plants (40 CFR part 63, subpart LL) on October 7, 1997 (62 FR 52384). The NESHAP contain emission limits and standards for total fluorides (TF), which is a surrogate for hydrogen fluoride, and POM. These limits apply to each new or existing potline, paste production plant, and anode bake furnace and to each new pitch storage tank associated with primary aluminum production and located at a major source.

After promulgation, industry representatives identified two significant compliance-related issues:

- Review of the POM emission limit for the vertical stud Soderberg-2 (VSS2) subcategory of existing potlines, based on the availability of additional data; and
- The date by which the owner or operator must conduct a performance test to demonstrate initial compliance for an existing potline or anode bake furnace that has been shut down and subsequently restarted.

We received a petition from the industry requesting amendments to revise the POM emission limits for VSS2 potlines. As part of the request, the petition included additional test data (collected from 1999 through 2000) for all VSS2 potlines. We agreed to analyze the additional data and evaluate the achievability of the existing MACT limit for POM.

We proposed amendments to the existing rule on March 17, 2003 (68 FR 12645). We provided a 60-day comment period for the proposed amendments and received a total of five comment letters. Three of the comment letters were from interested private citizens, one was unrelated to this rulemaking, and one was from the industry trade association. A copy of each of these comment letters is available in the docket for this rulemaking (Docket ID No. OAR–2002–0031). The final amendments reflect full consideration of all the comments we received.

II. Summary of the Final Amendments

A. What Is the Final POM Emission Limit for VSS2 Potlines?

The VSS2 subcategory includes all existing vertical stud Soderberg potlines. Section 63.843(a)(2)(i) of the existing rule limits POM emissions from each existing VSS2 potline to 1.8 kilograms per Megagram (kg/Mg) or 3.6 pounds per ton (lb/ton) of aluminum produced for each potline. The final amendments change the POM limit to 2.85 kg/Mg (5.7 lb/ton) of aluminum produced. Table 2 to subpart LL gives the POM emission limits for potlines at those plants that comply by emissions averaging. The final POM emission averaging limits for VSS2 potlines are:

QUARTERLY POM LIMIT (LB/TON)

[For a given number of potlines]

2 lines	3 lines	4 lines	5 lines	6 lines	7 lines	8 lines
5.0	4.7	4.5	4.4	4.3	4.2	4.1

B. What are the final changes to the compliance provisions?

Section 63.847(a) of the existing rule currently requires the owner or operator to demonstrate initial compliance by specified dates. The final amendments clarify the introductory text of paragraph (a) by replacing the phrase ''demonstrate initial compliance'' with the word ''comply.'' This change distinguishes the compliance date of the rule from the date by which a plant

must actually conduct their initial performance test.

Section 63.847(c) of the existing rule currently requires the owner or operator to conduct an initial performance test during the first month following the applicable compliance date. For a new or reconstructed affected source, the final amendments require that the owner or operator conduct the initial performance test by:

- The 180th day after startup for a potline (or potroom group). The 180-day period starts when the first pot in a potline (or potroom group) is energized.
- The 45th day from the start of the second anode bake cycle (but no later than the 180th day from the startup of the anode bake furnace).
- The 30th day after startup for a pitch storage tank (if the owner or operator elects to conduct an initial performance test rather than a design evaluation).

Today's final amendments will not change the timing of the initial performance test for existing affected sources (*i.e.*, the initial performance test must still be conducted during the first month after the compliance date).

We are also adding performance test dates following startup of an existing potline or anode bake furnace that was shut down at the time compliance would have otherwise been required and subsequently restarted. Again, the final amendments will require 180 days after startup for a potline (or potroom group) and 45 days from the start of the second anode bake cycle (but no later than 180 days from the startup of the anode bake furnace). The amendments will also change the notification requirements in 40 CFR 63.850(a) of the existing rule to require advance notice to the Administrator at least 30 days before restart of an affected source that has been shut down.

Appendix A to 40 CFR part 63, subpart LL, shows the requirements in the NESHAP General Provisions (40 CFR part 63, subpart A) that do not apply to primary aluminum reduction plants. We are also amending appendix A to reflect the changes in performance test dates and the new notification requirement.

III. Response to Comments on the Proposed Amendments

We received only two substantive comments on the proposed amendments. Two other commenters simply stated a concern that the proposed emission limit for VSS2 potlines was too high. However, these commenters provided no additional information or rationale that would allow further consideration.

Comment: One commenter stated the 45-day period to complete startup and performance tests for an anode bake furnace is insufficient to ensure testing under normal operating conditions. The startup typically includes a refractory drying/curing cycle that may take from 45 to 120 days, depending on several factors. During the drying/curing cycle, firing rates are retarded, and in some cases, the drying cycle is performed with baked or partially-baked anodes, which results in POM emissions that are lower than normal. Consequently, a performance test conducted during the refractory drying/curing cycle is not representative of normal operation. The commenter offered two options to ensure testing under normal operating conditions: (1) start the 45-day period at the beginning of the ''first anode bake cycle,'' which is defined as the cycle that occurs after the ''refractory drying/curing cycle''; or (2) define ''anode bake cycle'' to include the curing/drying step and start the 45-day period at the beginning of the second anode bake cycle.

Response: We agree with the commenter's suggestion for clarifying the time period for startup of anode bake furnaces to ensure that the performance tests are performed under normal operating conditions. We agree that anode production during the drying/curing cycle is not representative of normal operating conditions. Consequently, we changed the rule provisions in 40 CFR 63.847(c)(2)(ii) and (c)(3)(ii) to state that the 45-day period starts at the beginning of the second anode bake cycle instead of the first anode bake cycle. However, we believe that performance testing should always be completed within 180 days from the beginning of the first anode bake cycle. With this change, performance testing will occur during normal anode production after the refractory has dried and cured. We also added a definition of ''anode bake cycle'' to the existing rule. ''Anode bake cycle'' means the period during which the regularly repeated sequence of loading, preheating, firing, cooling, and removing anodes from all sections within an anode bake furnace occurs one time.

Comment: One commenter stated that increased POM emissions are not justifiable because of the serious human health effects and the potential environmental and ecological effects due to POM's persistence in the environment, potential for accumulation, and toxicity. This commenter estimates that the revised VSS2 limit will increase POM emissions by 5.6 million lbs/year based on nationwide aluminum production of 2.7 million tons/year. The commenter asks how such emissions can be considered ''not economically significant'' and not in need of an environmental health assessment.

Response: We do not agree with the commenter's estimate of increased POM emissions. No increase in POM emissions will occur because the limit reflects the actual level of control that has been achieved by the one plant in the VSS2 category. The POM emissions limit will ensure that this plant's POM emissions do not increase in the future. In addition, the commenter's use of total nationwide aluminum production to generate emission estimates is inappropriate because the POM limit for VSS2 potlines will affect only one plant out of over 20 primary aluminum plants. Consequently, the commenter's assertion of increased emissions from primary aluminum plants has no basis in fact.

The revised emission limit correctly reflects MACT for potlines in the VSS2 subcategory based on CAA requirements. Our rationale for the revised POM limit for VSS2 potlines is detailed in the preamble to the proposed amendments (51 FR 12645, 12648; March 17, 2003), and a copy of our analysis of the data is included in the docket.

We understand the commenter's concern about the potential health effects of POM. Section 112(f) of the CAA requires that we evaluate health risks and ecological effects within 8 years after the promulgation of the MACT standards. If the technology-based standards are found not to be protective of public health and the environment, CAA section 112(f) requires us to promulgate more stringent standards that protect the public health with an ample margin of safety and reasonably prevent adverse environmental effects. These potential impacts will be fully evaluated in our upcoming review of the existing rule.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the final amendments are not a ''significant regulatory action'' under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The requirement for advance notification of startup for an existing affected source that has been shut down has no impact because similar advance notification is already required for a new or reconstructed affected source. However, OMB has previously approved the information collection requirements contained in the existing rule (40 CFR part 63, subpart LL) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0360, EPA Information Collection Request (ICR) No. 1767.04. A copy of the OMB-approved ICR may be obtained from Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division, EPA (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *Auby.Susan@epa.gov*, or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final amendments. For the purposes of assessing the impact of today's final amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small government jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and that is not dominant in its field.

After considering the economic impacts of today's final rule amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. The final amendments will not impose any requirements on small entities. None of the plants in this industry is classified as a small entity.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the final amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. No costs are attributable to the final amendments. Thus, the final amendments are not subject to the requirements of sections 202 and 205 of the UMRA. The EPA has also determined that the final amendments contain no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's final amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

The final amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the final amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The final amendments do not have tribal implications, as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, 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. No tribal governments own facilities subject to the rule. Thus, Executive Order 13175 does not apply to the final amendments.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final amendments are not subject to Executive Order 13045 because they are based on control technology and not on health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The final amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. The VCS are technical standards (*e.g.*, material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

The final amendments do not involve technical standards. Therefore, EPA is not considering the use of any VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The amendments will be effective on November 2, 2005.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 25, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart LL—[Amended]

■ 2. Section 63.842 is amended by adding, in alphabetical order, a definition for the term, ''Anode bake cycle'' to read as follows:

§ 63.842 Definitions.

* * * * *

Anode bake cycle means the period during which the regularly repeated sequence of loading, preheating, firing, cooling, and removing anodes from all sections within an anode bake furnace occurs one time.

* * * * *

■ 3. Section 63.843 is amended by revising paragraph (a)(2)(iii) to read as follows:

§ 63.843 Emission limits for existing sources.

(a) * * *

(2) * * *

(iii) 2.85 kg/Mg (5.7 lb/ton) of aluminum produced for each VSS2 potline.

* * * * *

■ 4. Section 63.847 is amended by revising paragraph (a) introductory text and paragraph (c) to read as follows:

§ 63.847 Compliance provisions.

(a) *Compliance dates*. The owner or operator of a primary aluminum plant must comply with the requirements of this subpart by:

* * * * *

(c) *Performance test dates*. Following approval of the site-specific test plan, the owner or operator must conduct a performance test to demonstrate initial compliance according to the procedures in paragraph (d) of this section. If a performance test has been conducted on the primary control system for potlines or for the anode bake furnace within the 12 months prior to the compliance date, the results of that performance test may be used to demonstrate initial compliance. The owner or operator must conduct the performance test:

(1) During the first month following the compliance date for an existing potline (or potroom group) or anode bake furnace;

(2) By the date determined according to the requirements in paragraph (c)(2)(i), (ii), or (iii) of this section for a new or reconstructed potline, anode bake furnace, or pitch storage tank (for which the owner or operator elects to conduct an initial performance test):

(i) By the 180th day following startup for a potline or potroom group. The 180-day period starts when the first pot in a potline or potroom group is energized.

(ii) By the 45th day from the start of the second anode bake cycle (but no later than the 180th day from the startup of the anode bake furnace).

(iii) By the 30th day following startup for a pitch storage tank. The 30-day period starts when the tank is first used to store pitch.

(3) By the date determined according to the requirements in paragraph (c)(3)(i) or (ii) of this section for an existing potline or anode bake furnace that was shut down at the time compliance would have otherwise been required and is subsequently restarted:

(i) By the 180th day following startup for a potline or potroom group. The 180-day period starts when the first pot in a potline or potroom group is energized.

(ii) By the 45th day from the start of the second anode bake cycle (but no later than the 180th day from the startup of the anode bake furnace).

* * * * *

■ 5. Section 63.850 is amended by:

■ a. Revising paragraph (a)(7);

■ b. Revising paragraph (a)(8); and

■ c. Adding paragraph (a)(9) to read as follows:

§ 63.850 Notification, reporting, and recordkeeping requirements.

(a) * * *

(7) One-time notification for each affected source of the intent to use an HF continuous emission monitor;

(8) Notification of compliance approach. The owner or operator shall develop and submit to the applicable regulatory authority, if requested, an engineering plan that describes the techniques that will be used to address the capture efficiency of the reduction cells for gaseous hazardous air pollutants in compliance with the emission limits in §§ 63.843, 63.844, and 63.846; and

(9) One-time notification of startup of an existing potline or potroom group, anode bake furnace, or paste production plant that was shut down for a long period and subsequently restarted. The owner or operator must provide written notice to the Administrator at least 30 days before the startup.

* * * * *

■ 6. Table 2 to subpart LL is amended by revising the entry for ''VSS2 potlines'' to read as follows:

TABLE 2 TO SUBPART LL OF PART 63.—POTLINE POM LIMITS FOR EMISSION AVERAGING

Type	Quarterly POM limit (lb/ton) [for given number of potlines]						
	2 lines	3 lines	4 lines	5 lines	6 lines	7 lines	8 lines
*	*	*	*	*	*	*	*
VSS2	5.0	4.7	4.5	4.4	4.3	4.2	4.1

■ 7. Appendix A to subpart LL is amended by revising the title of appendix A and by adding new entries, in numerical order, for § 63.7(a)(2)(ii) and (iii) and § 63.9(b)(1)–(5) to read as follows:

APPENDIX A TO SUBPART LL OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS

[40 CFR part 63, subpart A]

General provisions citation	Requirement	Applies to subpart LL	Comment
*	*	*	*
63.7(a)(2)(ii) and (iii)	Performance testing requirements.	No	Subpart LL specifies performance test dates.
*	*	*	*
63.9(b)(1)–(5)	Initial notifications	Yes, except as noted in ''comment'' column.	§ 63.850(a)(9) includes requirement for startup of an existing affected source that has been shut down.
*	*	*	*

[FR Doc. 05–21840 Filed 11–1–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2692; MB Docket No. 04–218; RM–10987, RM–11237]

Radio Broadcasting Services; Cimarron, Las Vegas and Pecos, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 69 FR 35561 (June 25, 2004) this *Report and Order* reallots Channel 264C3, Station KLVF(FM) (''KLVF''), Las Vegas, New Mexico, to Pecos, New Mexico, and modifies Station KLVF's license accordingly. The coordinates for Channel 264C3 at Pecos, New Mexico, are 35–40–48 NL and 105–32–26 WL, with a site restriction of 16.9 kilometers (10.5 miles) northeast of Pecos. The *Report and Order* also allots Channel 296A to Las Vegas, New Mexico, at coordinates of 35–36–33 NL and 105–09–31 WL, with a site restriction of 5.4 kilometers (3.3 miles) east of Las Vegas, New Mexico.

DATES: Effective November 28, 2005.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 04–218, adopted October 12, 2005, and released October 14, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document 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 *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ For the reasons set forth in the preamble, part 73 is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 264C3 and adding Channel 296A at Las Vegas; and by adding Channel 264C3 at Pecos.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–21556 Filed 11–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2716; MB Docket No. 05–103, RM–11205]

Radio Broadcasting Services; Barnesboro and Gallitzen, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Vernal Enterprises, Inc., licensee of Station WHPA(FM), Channel 228A, Barnesboro, Pennsylvania, deletes Channel 228A at Barnesboro, Pennsylvania, from the FM Table of Allotments, allots Channel 228A at Gallitzen, Pennsylvania, as the community's first local FM service, and modifies the license of Station WHPA(FM) to specify operation on Channel 228A at Gallitzen. Channel 228A can be allotted to Gallitzen, Pennsylvania, in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.8km (9.0 miles) north of Gallitzen. The coordinates for Channel 228A at Gallitzen, Pennsylvania, are 40–36–31 North Latitude and 78–36–21 West Longitude.

DATES: Effective December 1, 2005.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05–103, adopted October 12, 2005, and released October 17, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site *http://www.bcpiweb.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Pennsylvania is amended by removing Barnesboro, Channel 228A, and by adding Gallitzen, Channel 228A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–21555 Filed 11–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2696; MB Docket No. 02–352; RM–10602, RM–10776, RM–10777]

Radio Broadcasting Services; Clyde and Glenville, NC; Tazewell, TN and Weaverville, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of The Stair Company, substitutes Channel 290C2 for Channel 290A at Tazewell, Tennessee, reallots Channel 290C2 from Tazewell to Weaverville, North Carolina, and modifies Station WCTU(FM)'s license accordingly (RM–10777). At the request of Glenville Radio Broadcasters, we dismiss the petition for rule making proposing the allotment of Channel 289A at Glenville, North Carolina, as the community's first local aural transmission service (RM–10602). *See* 67 FR 71926, December 3, 2002. At the request of Georgia-Carolina Radiocasting Company, LLC, we also dismiss the counterproposal proposing the allotment of Channel 290A at Clyde, North Carolina, as the community's first local aural transmission service (RM–10776). Channel 290C2 can be reallotted to Weaverville in compliance with the Commission's minimum distance separation requirements with a restriction of 27.1 kilometers (16.8 miles) northwest to avoid a short-spacing to the licensed site of Station WAGI–FM, Channel 287C, Gaffney, South Carolina. The reference coordinates for Channel 290C2 at Weaverville are 35–48–31 North Latitude and 82–49–37 West Longitude.

DATES: Effective November 28, 2005.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 02–352, adopted October 12, 2005, and released October 14, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160,

or via the company's Web site, *http://www.bcpiweb.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Weaverville, Channel 290C2.

■ 3. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Tazewell, Channel 290A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–21546 Filed 11–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2695; MB Docket No.05–138, RM–11162, RM–11266*]

Radio Broadcasting Service; Cameron and Hackberry, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Charles Crawford, allots Channel 296C3 at Cameron, Louisiana, as the community's first local service, and dismisses a counterproposal filed by Pittman Broadcasting Services, LLC to allot Channel 296A at Hackberry, Louisiana. *See* 70 FR 19397, published April 13, 2005. *See also* Public Notice, Report No. 2723, RM–11266*, issued July 29, 2005. Channel 296C3 can be allotted to Cameron in compliance with the Commission's minimum distance separation requirements. The reference coordinates for Channel 296C3 at Cameron are 29–47–48 North Latitude and 93–19–30 West Longitude. A filing window for Channel 296C3 at Cameron, Louisiana will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective November 28, 2005.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 05–138, adopted October 12, 2005, and released October 14, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision 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 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ For the reasons set forth in the preamble, part 73 is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Cameron, Channel 296C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–21547 Filed 11–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2719; MB Docket No. 05–8, RM–11142; MB Docket No. 05–11, RM–11144; MB Docket No. 05–12, RM–11145]

Radio Broadcasting Services; Goldendale, WA; Port Angeles, WA; and Ty Ty, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants three new allotments in Goldendale, Washington; Port Angeles, Washington and Ty Ty, Georgia. The Audio Division, at the request of Klickitat Broadcasting, allots Channel 240A at Goldendale, Washington, as that community's third local aural transmission service. The reference coordinates for Channel 240A at Goldendale are 45–46–12 North Latitude and 120–43–48 West Longitude. The allotment requires a site restriction of 9.3 kilometers (5.8 miles) southeast to avoid a short-spacing to the license site of FM Station KXXO, Channel 241C, Olympia, Washington and the application site of Channel 241C2 at Stanfield, Oregon. Supplementary Information, *infra.*

DATES: Effective December 1, 2005. The window period for filing applications for these allotments will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket Nos. 05–8, 05–11, 05–12, adopted October 12, 2005 and released October 17, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission

will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

The Audio Division, at the request of Plan 9 Broadcasting, allots Channel 229A at Port Angeles, Washington, as that community's fifth local aural transmission service. The reference coordinates for Channel 229A at Port Angeles are 48–06–54 North Latitude and 123–26–36 West Longitude. This allotment is at city reference coordinates and requires no site restriction. Port Angeles is located within 320 kilometers (199 miles) of the U.S.-Canadian border. Canadian concurrence has been requested for this allotment, as a specially negotiated short-spaced allotment because the proposed Port Angeles allotment is short-spaced to Canadian Station CJJR–FM, Channel 229C, Vancouver, BC and vacant Channel 230A at Port Renfrew, BC. However, notification from Canada has not been received. Therefore, if a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Canadian government, the construction permit will include the following condition: ''Operation with the facilities specified for Port Angeles herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the USA-Canadian FM Broadcast Agreement.''

The Audio Division, at the request of Sutton Communications Company, allots Channel 249A at Ty Ty, Georgia, as that community's first local aural transmission service. The reference coordinates for Channel 249A at Ty Ty are 31–34–01 North Latitude and 83–40–07 West Longitude. This allotment requires a site restriction of 10.8 kilometers (6.7 miles) north to avoid short-spacing to the application site of Station WDMG–FM, Channel 250A, Ambrose, Georgia and license site of Station WRAK–FM, Channel 247C, Bainbridge, Georgia.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Accordingly, part 73 is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Ty Ty, Channel 249A.

■ 3. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Channel 240A at Goldendale; and by adding Port Angeles, Channel 229A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–21548 Filed 11–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 05–175, MB Docket No. 04–312, RM–11049]

Television Broadcast Service; Phoenix and Holbrook, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of NBC Telemundo Phoenix, Inc. (Telemundo) and Community Television Educators, Inc. (CTE) has amended the Television Table of Allotments to remove the noncommercial reservation of analog Channel *39 at Phoenix, Arizona, and reserve analog Channel 11 for noncommercial educational use at Holbrook, Arizona. The Commission has also modified the license of Telemundo's station KPHZ(TV) to specify Channel 39, Phoenix, and the license of CTE's station KDTP(TV) to specify Channel *11, Holbrook. With this action, this proceeding is terminated.

DATES: Effective November 28, 2005.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MB Docket No. 04–312, adopted October 5, 2005, and released October 13, 2005. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. 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 301–816–2820, facsimile 301–816–0169, or via e-mail *joshir@erols.com.*

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Commission will send a copy of this Memorandum Opinion and Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television broadcasting, Television.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

■ 2. Section 73.606(b), the Table of Television Allotments under Arizona, is amended by removing TV channel 11+ and adding TV channel *11+ at Holbrook.

■ 3. Section 73.606(b), the Table of Television Allotments under Arizona, is amended by removing TV channel *39 at Phoenix and adding TV channel 39, Phoenix.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–21869 Filed 11–1–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. FRA 2005–22522]

RIN 2130–AB71

Track Safety Standards; Inspection of Joints in Continuous Welded Rail (CWR)

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Interim final rule.

SUMMARY: FRA is amending the Federal Track Safety Standards to improve the inspection of rail joints in continuous welded rail (CWR). This interim final rule (IFR) requires track owners to develop and implement a procedure for the detailed inspection of rail joints in CWR. This IFR also requires track owners to keep records of those inspections.

DATES: This final rule is effective December 2, 2005.

(1) *Written Comments:* Written comments must be received on or before December 19, 2005. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) *Public Hearing:* Requests for a public hearing must be in writing and must be submitted to the Department of Transportation Docket Management System at the address below on or before December 19, 2005. If a public hearing is requested and scheduled, FRA will announce the date, location, and additional details concerning the hearing by separate notice in the **Federal Register**.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FRA 2005–22522 by any of the following methods:

Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- 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.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to 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 FURTHER INFORMATION CONTACT: Gordon A. Davids, P.E., Chief Engineer—Structures, Office of Safety, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (*Gordon.Davids@fra.dot.gov* or 202–493–6320); or Christina McDonald, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (*Christina.McDonald@fra.dot.gov* or 202–493–6032).

SUPPLEMENTARY INFORMATION:

I. Continuous Welded Rail (CWR)

A. General

CWR refers to the way in which rail is joined together to form track. In CWR, rails are welded together to form one continuous rail that may be several miles long. Although CWR is normally one continuous rail, there can be joints [1] in it for one or more reasons: The need for insulated joints that electrically separate track segments for signaling purposes, the need to terminate CWR installations at a segment of jointed rail, or the need to remove and replace a section of defective rail.

B. Statutory and Regulatory History of CWR

The Federal Railroad Administration (FRA) issued the first Federal Track Safety Standards in 1971. See 36 FR 20336. FRA addressed CWR in a rather general manner, stating, in § 213.119, that railroads must install CWR at a rail temperature that prevents lateral displacement of track or pull-aparts of rail ends and that CWR should not be disturbed at rail temperatures higher than the installation or adjusted installation temperature.

In 1982, FRA deleted § 213.119, because FRA believed it was so general in nature that it provided little guidance to railroads and it was difficult to enforce. See 47 FR 7275 and 47 FR 39398. FRA stated that ''While the importance of controlling thermal stresses within continuous welded rail has long been recognized, research has not advanced to the point where specific safety requirements can be established.'' 47 FR 7279. FRA explained that continuing research might produce reliable data in this area in the future.

In the Rail Safety Enforcement and Review Act of 1992 (Public Law 102–365, September 3, 1992), Congress mandated that FRA evaluate procedures for installing and maintaining CWR. In 1994, in the Federal Railroad Safety Reauthorization Act (Pub. L. 103–272, July 5, 1994), Congress required DOT to evaluate cold weather installation procedures for CWR. In light of the evaluation of those procedures, as well as information resulting from FRA's own research and development, FRA addressed CWR procedures by adding § 213.119 during its 1998 revision of the Track Safety Standards. See 63 FR 33992.

Section 213.119, as added in 1998, requires railroads to develop procedures that, at a minimum, provide for the installation, adjustment, maintenance, and inspection of CWR, as well as a training program and minimal recordkeeping requirements. Section 213.119 does not dictate which procedures a railroad must use in their CWR plans. It allows railroads to develop and implement their individual CWR plans based on procedures which have proven effective for them over the years. Accordingly, procedures can vary from railroad to railroad.

II. SAFETEA–LU

On August 10, 2005, President Bush signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), (Pub. L. 109–59, August 10, 2005) into law. Section 9005(a) of SAFETEA–LU amended 49 U.S.C. 20142 by adding a new subsection (e) as follows:

(e) Track Standards.—

(1) In General.—Within 90 days after the date of enactment of this subsection, the Federal Railroad Administration shall—

(A) Require each track owner using continuous welded rail track to include procedures (in its procedures filed with the Administration pursuant to section 213.119 of title 49, Code of Federal Regulations) to improve the identification of cracks in rail joint bars;

(B) Instruct Administration track inspectors to obtain copies of the most recent continuous welded rail programs of each railroad within the inspectors' areas of responsibility and require that inspectors use those programs when conducting track inspections; and

(C) Establish a program to review continuous welded rail joint bar inspection data from railroads and Administration track inspectors periodically.

(2) Inspection.—Whenever the Administration determines that it is necessary or appropriate, the Administration

[1] Rail joints commonly consist of two joint bars that are bolted to the sides of the rail and that contact the rail at the bottom surface of the rail head and the top surface of the rail base.

may require railroads to increase the frequency of inspection, or improve the methods of inspection, of joint bars in continuous welded rail.

Pursuant to that mandate, FRA is revising the Track Safety Standards located in 49 CFR part 213.

III. Train Accidents Involving Joints in CWR

Since FRA's 1998 revision of the Track Safety Standards, there have been a number of train accidents in which the failure of a rail joint in CWR was a factor. The National Transportation Safety Board (NTSB) investigated three recent accidents and made recommendations to FRA concerning joints in CWR. The NTSB recommendations closely parallel the statutory mandate requiring this IFR. The three accidents and subsequent NTSB recommendations are described below.

A. Derailment of Canadian Pacific Railroad Train 292–16 Near Minot, ND

On January 18, 2002, Canadian Pacific Railway (CPR) freight train 292–15 derailed 31 of its 112 cars about ½ mile west of the city limits of Minot, North Dakota. Five tank cars carrying anhydrous ammonia, a liquefied compressed gas, catastrophically ruptured, and a vapor plume covered the derailment site and surrounding area. About 11,600 people occupied the area affected by the vapor plume. One resident was fatally injured, and 60 to 65 residents of the neighborhood nearest the derailment site were rescued. As a result of the accident, 11 people sustained serious injuries, and 322 people, including the 2 train crewmembers, sustained major injuries. Damages exceeded $2 million, and more than $8 million has been spent in environmental remediation.

In its Railroad Accident Report,[2] the NTSB determined that the probable cause of the derailment was ''an ineffective Canadian Pacific Railway inspection and maintenance program that did not identify and replace cracked joint bars before they completely fractured and led to the breaking of the rail at the joint.'' The NTSB found that the catastrophic failure of five tank cars and the instantaneous release of 146,700 gallons of anhydrous ammonia also contributed to the severity of the accident.

The NTSB issued several findings in its report. The NTSB found that the train derailed because joint bars at the east end of the plug rail[3] fractured (either under the previous train or as the accident train passed over the joint), and then, after the joint bars fractured, the rail itself also fractured and broke away. The NTSB found that CPR's inspection procedures regarding rail joint bars in CWR were inadequate to properly inspect and maintain joints within CWR, and those inadequate procedures allowed undetected cracking in the joint bars at the accident location to grow to a critical size. In a similar vein, the NTSB found that FRA's requirements regarding rail joint bars in CWR were ineffective, because they did not require on-the-ground visual inspections or nondestructive testing adequate to identify cracks before they grow to critical size and result in joint bar failure.

The NTSB also found that FRA's oversight of CPR's CWR program was ineffective, because FRA neither reviewed the CWR program nor ensured that its track inspectors had copies of the CWR programs to determine if the railroad was in compliance with it.

As a result of these findings, the NTSB made seven safety recommendations, of which the most relevant are quoted below.

> Require all railroads with continuous welded rail track to include procedures (in the programs that are filed with the Federal Railroad Administration) that prescribe on-the-ground visual inspections and nondestructive testing techniques for identifying cracks in rail joint bars before they grow to critical size. (R–04–1).
>
> Establish a program to periodically review continuous welded rail joint bar inspection data from railroads and Federal Railroad Administration track inspectors and, when determined necessary, require railroads to increase the frequency or improve the methods of inspection of joint bars in continuous welded rail. (R–04–2).
>
> Instruct Federal Railroad Administration track inspectors to obtain copies of the most recent continuous welded rail programs of the railroads that fall within the inspectors' areas of responsibility and require that inspectors use those programs when conducting track inspections. (R–04–3).

B. Derailment of Amtrak Train No. 58 Near Flora, MS

On April 6, 2004, National Railroad Passenger Corporation (Amtrak) train No. 58 (City of New Orleans) derailed on Canadian National Railway Company track near Flora, Mississippi. The entire train derailed, including one locomotive, one baggage car, and eight passenger cars. The derailment resulted in one fatality, three serious injuries, and 43 minor injuries. The equipment costs associated with the accident totaled about $7 million.

In its Railroad Accident Report,[4] the NTSB determined that the probable cause of the accident was ''the failure of the Canadian National Railway Company to properly maintain and inspect its track, resulting in rail shift and the subsequent derailment of the train, and the Federal Railroad Administration's ineffective oversight to ensure proper maintenance of the track by the railroad.''

The NTSB made two recommendations to FRA, one of which is relevant to the discussion here.

> Emphasize to your track inspectors the importance of enforcing a railroad's continuous welded rail program as a part of the Federal Track Safety Standards, and verify that inspectors are documenting noncompliance with the railroad's program. (R–05–05).

C. Derailment of Union Pacific Train ZLAMN–16 Near Pico Rivera, CA

On October 16, 2004, Union Pacific (UP) freight train ZLAMN–16 derailed 3 locomotives and 11 cars near Pico Rivera, California. Small amounts of hazardous materials were released from the transported cargo. There were no injuries to area residents, the train crew, or the emergency response personnel. UP estimated the monetary damage at $2.7 million.

In its Railroad Accident Brief,[5] the NTSB determined ''that the probable cause of the derailment was the failure of a pair of insulated joint bars due to fatigue cracking. Contributing to the accident was the lack of an adequate on-the-ground inspection program for identifying cracks in rail joint bars before they grow to critical size.''

The NTSB reiterated two of the recommendations that it had made to FRA after the Minot, North Dakota accident: (1) R–04–01 about on-the-ground visual inspections and nondestructive testing techniques and (2) R–04–02 about a program to review joint bar inspection data. The NTSB further stated in its brief:

> The CWR track involved in the Pico Rivera accident had all the inspections required by the UP and the FRA. In some instances, the inspections were done more frequently than required. Nevertheless, the inspections failed

[2] NTSB Railroad Accident Report: Derailment of Canadian Pacific Railway Freight Train 292–16 and Subsequent Release of Anhydrous Ammonia Near Minot, North Dakota, January 18, 2002 (NTSB/RAR–04–01) (March 9, 2004).

[3] A ''plug rail'' describes a short piece of rail inserted into a length of CWR to replace a similar piece that was removed because of defects or damage.

[4] NTSB Railroad Accident Report: Derailment of Amtrak Train No. 58, City of New Orleans, Near Flora, Mississippi, April 6, 2004 (NTSB/RAR–05/02) (July 26, 2005).

[5] NTSB Railroad Accident Brief: Accident No. DCA–05–FR–002 (NTSB/RAB–05/02) (March 9, 2004).

to detect the developing problems and prevent the ultimate failure. Additionally, during the 2 days after the last inspection, more than 100 trains passed over the insulated joint bars without either discovering or reporting a defect. Trains traversed the area after the insulated joint bars were completely broken, as evidenced by the rail batter in both directions.

Several indications of an imminent or actual defect were present before this accident, which the inspection from a moving vehicle did not discover:

- The epoxy bead was missing from the center section of the insulated joint bar, indicating vertical movement.
- The joint bars cracked before they completely fractured. Part of each crack was visible on the lower outer portion of the bar for some time before its failure.
- Rail end batter developed when the joint bars completely fractured and trains continued to pass over them in both directions.

These indications developed over time, and a close visual inspection from the ground would have likely uncovered the emerging problem and allowed corrective action to be taken to avoid the accident.

IV. FRA's Approach to CWR in This IFR

Earlier versions of § 213.119 did not require track owners to include any provisions in their CWR plan related to joints in CWR. Track owners were required simply to address joints in CWR in the same manner as they addressed joints in conventional jointed rail. See 49 CFR 213.121. This IFR now requires track owners to specifically address joints in CWR in their respective CWR plans.

To meet the statutory requirement that FRA issue this regulation within 90 days of the enactment of SAFETEA–LU, FRA is issuing this IFR. This IFR addresses 49 U.S.C. 20142(e)(1)(A) and (e)(1)(C) (hereinafter referred to as (e)(1)(A) and (e)(1)(C)). Because 49 U.S.C. 20142(e)(1)(B) does not require regulatory action on the part of FRA, FRA is not addressing it in this rulemaking.

Subparagraph (e)(1)(A) mandates that FRA require each track owner to ''include procedures * * * to improve the identification of cracks in rail joint bars.'' Congress did not specify how FRA should effect that improvement. One way of improving the identification of such cracks is through on-foot inspection of joints in CWR. Because most cracks in joint bars can be detected by eye before they grow to failure, on-foot inspections can be of great value in identifying joint failure. Accordingly, FRA is requiring railroads to conduct periodic and special on-foot inspections of CWR joints. See 213.119(g)(1).

Rather than limit these on-foot inspections to the identification of joint bar cracks, FRA is requiring track owners to also inspect for joint conditions that can lead to the development of joint bar cracks. Track owners should inspect all safety-critical aspects of joints, including any indications of potential failure of the joint itself; any indications of potential failure of any components of the joint (*e.g.*, rails, bolts, supporting crossties, and track fasteners); and the track itself in the vicinity of the joint (including the effectiveness of rail anchors or other devices for restraint of longitudinal movement of the rail). In the rule, FRA lists examples of conditions that may indicate potential failure. This list is not all-inclusive. There are several other conditions, and FRA urges track owners to consider all conditions, not just the listed examples.

In doing this, railroads will address the root of the problem—*i.e.*, preventing cracks from developing—rather than merely reacting to cracks after they have developed. It is understood that certain conditions involving rail joints and the surrounding CWR contribute to the development and propagation of cracks in rail joints. If track inspectors can inspect for these conditions, detect these conditions, and provide information so that railroads can correct these conditions, it will reduce the probability of joint failures and subsequent train accidents.

Furthermore, this preventive approach is more appropriate given that the development of a crack in a rail joint bar can progress at an unpredictable rate. Some cracks might exist for years without causing a rupture of the joint, while other cracks can progress rapidly from an undetectable size to complete failure. For example, a joint can completely fail under a single impact load if the joint is subjected to low temperatures and very high-tension forces.

FRA believes that the time and effort it takes a track inspector to perform a complete inspection will be minimal while the benefit of a complete inspection will be high. Once a track inspector has arrived at a location to inspect a joint and begun inspecting that joint, it takes little time and effort (over and above the effort to search for and identify cracks in joint bars) for him or her to note the condition of the entire joint and its surroundings. There are both safety and management benefits to a complete inspection. The safety benefit is obvious in that it prevents derailments. As for management benefits, track owners will save money and time, because it is easier and more cost effective to repair incipient joint conditions than actual joint cracks. For example, it is more economical to replace joint bolts or to reset rail anchors (*i.e.*, incipient failure conditions) than it is to replace a joint bar after it has developed a crack.

FRA realizes that inspections at a frequency that could detect incipient cracks prior to the possibility of failure in every case are not feasible given the current levels of railroad staffing and in light of the impediments to train operations that would result from restrictions required to provide for the safety and mobility of inspection personnel. However, proper preparation and maintenance of joints, together with appropriate instructions, can reduce the frequency of crack formation and also prevent rapid propagation in most cases—making a program of inspection both more feasible and more cost effective.

Subparagraph (e)(1)(C) requires that FRA ''establish a program to [periodically] review continuous welded rail joint bar inspection data'' from railroads and FRA track inspectors. Clearly, FRA can gather and review the joint bar inspection data from its own inspectors' inspections. However, in order for FRA to review railroad CWR joint bar inspection data, track owners must gather that data and make it available to FRA for review. Accordingly, this rule now requires track owners to keep this data and make it available to FRA. See § 213.119(i)(3).

In order to effectively manage the joint inspection process, a track owner must be able to clearly locate and identify each joint to be inspected. Location means that the inspector knows the right place to go. Identification means that the inspector can find the proper joint. The location might be in miles to the nearest one-hundredth or in Global Positioning System (GPS) coordinates to the nearest ten meters. Because there could be several joints (*e.g.*, three or four) in that same location, the identification of the joint will resolve that ambiguity. The identification might be a unique mark on the joint or a description in the record (*e.g.*, first joint in the south rail of Track 2, 37 feet west of the insulated joint at Signal 109.2).

A track owner will need to pass on this information to maintenance groups responsible for remedying the deficiencies found during inspections. It is important that track owners provide accurate information on the location of the joint and a clear identification of the joint, to ensure that the maintenance groups are working in the right place. An adequate inspection process must also identify the joints that have received the required inspection and

those that are due for inspection. This ensures that the track owner performs inspections at the required frequency.

FRA notes that, in many cases, this same information is already required to carry out existing CWR plans since most joints in CWR territory are now so-called ''temporary joints'' that correspond with locations where adjustment of the track structure is needed to prevent track buckling that results from a combination of thermal inputs and disturbance at other-than-neutral temperature. These joints, in most cases, were created when a section of the rail was cut out to remove an internal flaw.

There is not yet an established, efficient method for detecting cracks in joint bars by means of automated non-destructive testing (NDT). FRA believes that such a system might be developed, and that a requirement for effective joint bar inspection by either visual or other effective means can provide an incentive for the railroad industry to develop such a system. FRA is aware that some railroads do employ portable, hand-held equipment to conduct NDT of joint bars.

Use of this NDT technology, in addition to careful visual inspection, is encouraged where judged effective. However, FRA notes that there is insufficient engineering data to establish the effectiveness of NDT techniques as applied to joint bars in the service environment. Further, as illustrated by the ongoing examination of NDT technology and services by the joint FRA/industry Rail Integrity Task Force,[6] operator qualification and quality control remain areas of concern. Accordingly, FRA focuses the ''benchmark'' inspection requirements of this IFR on visual inspection by a qualified track inspector.

FRA requests comments on this IFR. FRA will consider any comments it receives and where appropriate, revise the final rule accordingly. In addition, FRA had provided the Railroad Safety Advisory Committee (RSAC) with an opportunity to review the prospective comments to this IFR. There was a meeting of the full RSAC on October 11, 2005. At that time, FRA offered the RSAC the task of reviewing comments to the IFR and more generally examining the status of railroad CWR plans, including joint integrity. The RSAC would have been free to suggest improvements to this IFR, together with other proposals that will advance the safety of train operations over CWR track, however the RSAC was unable to agree upon a task statement (defining the scope of the activity) that would meet the needs of each of the major stakeholder organizations whose participation would have been required in a RSAC working group. Failing consensus among the major stakeholders, FRA indicated that a task may be offered at a subsequent meeting.

V. Section-by-Section Analysis

Section 213.119, in General

FRA is revising § 213.119 by requiring track owners to incorporate into their CWR plans written procedures on the inspection of joints in CWR. This will require most track owners to amend their existing CWR plans. Track owners must also create and maintain records of these inspections. FRA provides details of these new provisions below.

Section 213.119(g)

Paragraph (g) requires each track owner to include in its CWR plan provisions for the scheduling and conducting of joint inspections. A person who is qualified under § 213.7 should perform these inspections on foot at the joint.

Section 213.119(g)(1)

New subparagraph (g)(1) identifies those items relating to joint inspections which track owners must address in their CWR plans. FRA notes that these items are the minimum, which track owners should address. Track owners are, of course, free to include additional items in their respective CWR plans.

This subparagraph refers to both periodic and special on-foot inspections. ''Periodic inspections'' are those inspections of joints in CWR that railroads will conduct on a regular basis. ''Special inspections'' are those inspections that track owners should initiate in response to (1) indications of damage to a joint, (2) environmental conditions, including severe cold weather, that can adversely effect the integrity of the joint, or (3) other unusual circumstances concerning a joint.

Track inspectors should identify and record these listed items during their inspections of joints, because these items are related to the integrity of the joint and thus, to the safety of trains that operate over the joint.

Joint bars with visible or otherwise detectable cracks. These cracks should be identified, because they can progress at an unpredictable rate, leading to the eventual rupture of the joint bar and then the misalignment of the rails and a derailment.

Loose, bent, or missing joint bolt. The bolts through the joint bars and rail ends are a vital component of the joint. Bolts are supposed to keep joint bars firmly supported to the joint. Where bolts are missing, loose, or bent, the bolts will fail to keep the joint bars firmly in contact with the rails. The rails are then liable to separate when there is cold weather and the cold weather causes high-tension forces through the joint.

Bolts in joints with bars that are separated from the web of the rail at the bolt holes tend to fail when the bolts bend. When the bolts bend beyond their elastic limit, they lose their design tension, and they are no longer capable of holding the joint bars firmly against the rail. The joint then permits the rails to move in relation to each other under passing wheels, causing increased impact loads on the joint and battering of the adjoining rail ends. This can potentially lead to cracks and eventually fracture of the joint bars or rail ends.

Rail end batter or mismatch that contributes to impact loads and instability of the joint. Rail end batter refers to the displacement of rail steel in the tread at the end of the rail. Rail end batter occurs when wheels pass over a joint and (1) the rails are pulled apart to the extent that the wheels can drop slightly into the gap, and/or (2) the rail ends are mismatched. Rail ends can be mismatched because joint bolts are loose or because the rails do not match when installed.

Excessive rail end batter causes high impact forces on all components of the joint; this can cause the joint bar or the rail to rupture. Also, vibrations at a battered joint can cause loss of consolidation of ballast at the joint, leaving the joint vulnerable to thermal buckling when high compressive forces are generated in the rails.

Evidence of excessive longitudinal rail movement in or near the joint, including, but not limited to, wide rail gap, defective joint bolts, disturbed ballast, surface deviations, gap between tie plates and rail, or displaced rail anchors. Longitudinal rail movement is evidence that the rails might not be securely anchored, that excessive tension forces are developing in the rail when it is cold, or that the joint bolts have lost their clamping properties after

[6] The Rail Integrity Task Force is a joint FRA/industry working group. It was convened in April 2002 to identify ''best practices'' within the railroad industry regarding the inspection, maintenance, and replacement of rail. The goal of the task force is to ''reduce rail-related accidents and casualties resulting from derailments caused by broken rail.''

The task force is comprised of subject-matter experts from the major heavy-haul railroads, the Association of American Railroads, FRA's Office of Safety Assurance and Compliance, FRA's Office of Railroad Development, as well as technical support from the Volpe National Transportation Systems Center. The task force has also requested and received input from all of the service providers in the field of nondestructive testing of rail.

being stretched in bending. As wheels pass over and drop into the gap, there are high impact forces on the joint. This can have the same consequences as described above for rail end batter. These tension forces, combined with additional impact loads, have a tendency to cause cracks and to cause rupture of joint bars and rail.

Section 213.119(g)(2)

This subsection requires track owners to do the following when formulating the procedures under § 213.119(g)(1): (1) Implement a system for identifying joints in CWR; (2) institute a procedure to inventory joints in CWR; (3) specify the conditions of potential joint failure for which personnel must inspect (including, at a minimum, the items listed in subparagraph (g)(1)); (4) specify the remedial action that personnel should take when they discover joints that are out of compliance with either part 213 or the track owner's CWR plan; and (5) specify the timing of inspections.

Subparagraph (g)(2)(v) requires track owners to specify the timing of inspections. It also establishes minimum inspection frequencies for certain joints. The differences are based on the class of track and the operation of passenger trains. The rule requires all joints in CWR in track classes 4 and higher to be inspected before October 31, 2006 and within 190 days of the previous inspection thereafter. It requires all joints in class 3, and class 2 track on which passenger trains operate, to be inspected before April 30, 2007 and within 370 days of the previous inspection thereafter. FRA requires railroads to conduct inspections more frequently for the higher class tracks (classes 4, 5, and 6), because trains operate over these tracks at a faster speed and therefore the consequences of an accident are much more serious.

The rule does not establish minimum inspection frequencies for joints in class 1 track, or class 2 track over which passenger trains do not operate. FRA believes that the costs would outweigh the benefits if FRA set minimums for all the lower classes of tracks. In addition, trains that operate over the lower classes of track do so at slower speeds and so there is less risk of accident and less serious consequences of an accident.

FRA emphasizes that the inspection frequency in subparagraph (g)(2)(v) is a minimum requirement. FRA notes that certain joints, due to their configuration, condition, or environmental circumstances, will probably require more frequent inspections. Examples would be joints with only four bolts, joints that give an indication of high rail tension loads, or joints in segments of track subject to wide variations of temperature. FRA also notes that joints in CWR often provide the first indication of thermal rail distress (either high compressive or tension forces) or incipient buckling. Therefore it would be prudent for a track owner to include provisions that pay special attention to joints where there are likely to be temperature extremes at either end of the spectrum.

For a rail joint management program to be effective, the results of an inspection must be clearly associated with the joint that has been inspected. This is necessary so that a work group dispatched to repair a joint will be able to locate the joint and confirm that they are at the correct location. It is up to the track owner to determine the method of identification and correlation. Possible methods include marking the joint or the adjacent track with a unique number or using Global Positioning System receivers.

FRA notes that part 213 has existing requirements addressing rail joints, including requirements for remediating cracked or broken joint bars. For instance, pursuant to § 213.121(b), ''if a joint bar on Classes 3 through 5 track is cracked, broken, or because of wear allows excessive vertical movement of either rail when all bolts are tight, it shall be replaced.'' Also, pursuant to § 213.121(b), ''if a joint bar is cracked or broken between the middle two bolt holes it shall be replaced.'' Existing requirements for rail joints will continue to apply to all rail joints, regardless of whether the rail joints are in CWR or in conventional jointed rail. See § 213.121.

Section 213.119(g)(3)

This subsection permits a track owner to devise an alternate program for the inspection of joints in CWR. A track owner seeking to deviate from the minimum inspection frequencies specified in §§ 213.119(g)(1) and (2) should submit the alternate procedures and a supporting statement of justification to FRA's Associate Administrator for Safety (Associate Administrator). In the supporting statement, the track owner must include data and analysis that establishes to the satisfaction of the Associate Administrator for Safety that the alternate procedures provide at least an equivalent level of safety across the railroad.

If the Associate Administrator for Safety approves the alternate procedures, the Associate Administrator will notify the track owner of such approval in writing. In that written notification, the Associate Administrator will specify the date on which the alternate procedures will become effective. After that date, the track owner shall comply with the approved procedures. If the Associate Administrator determines that the alternate procedures do not provide an equivalent level of safety, the Associate Administrator will disapprove the alternate procedures in writing. While a determination is pending with the Associate Administrator, the track owner shall continue to comply with the requirements contained in §§ 213.119(g)(1) and (2).

FRA expects that the track owner will include a risk analysis in its supporting statement of justification for alternate procedures. The risk analysis, whether qualitative or quantitative, should demonstrate that the track owner's program is at least as good (as applied across the entire railroad) as the benchmark level of inspection that FRA mandates in this IFR. The risk analysis would likely address such issues as tonnage, grades, curvature, prior joint failure rates (with respect to frequency), type of traffic, average train speed, and proximity to populations. The track owner might use risk analysis techniques to focus more frequent inspections in areas of greater risk (*e.g.*, approaches to bridges, close proximity to populated areas, heavy tonnage, significant hazardous materials traffic), while utilizing a lesser frequency at other locations and optimizing safety and efficiency.

FRA will be most anxious to learn when an efficient, effective, and economical automated procedure for joint bar inspection is developed. To this end, FRA is making efforts to explore new technologies for inspecting joint bars. FRA's Office of Research and Development is currently funding research to develop an automated, vehicle-mounted, visual imaging system that can survey joint bars across a territory by recording digital photographic images and generating the data to exception reports.

The Rail Integrity Task Force,[7] a joint FRA/industry working group, is also exploring the conditions under which railroads can more effectively detect joint bar cracks. One of the primary objectives of this Task Force is to review industry best practices for the inspection, maintenance, and replacement of rail. The Task Force is examining options for vehicle-mounted non-destructive testing that might, at a future date, provide the ability to detect

[7] See footnote 6 supra.

both internal defects as well as cracks in joint bars.

Technology (including frequent automated track geometry surveys) and sound CWR management, including prompt removal of so-called ''temporary'' joints, may provide the additional information required to verify the ongoing integrity of joints in CWR. The alternative procedures provision of this IFR will allow track owners to take advantage of these new approaches as they become available.

Sections 213.119(h)–(j)

With the addition of a new section 213.119(g), FRA has renumbered the old paragraphs (g), (h), and (i). The training requirements previously located in § 213.119(g) are now located in § 213.119(h). The recordkeeping requirements previously located in § 213.119(h) are now located in § 213.119(i). The definitions section formerly located in § 213.119(i) are now located in § 213.119(j).

Section 213.119(i)

Paragraph (i) contains the recordkeeping requirements for railroads that have track constructed of CWR. At a minimum, railroads must keep records of the items listed in § 213.119(i)(1) through (i)(3). With this interim final rule, FRA has added the recordkeeping requirement listed in (i)(3).

Subparagraph (i)(3)(A) provides that railroads must keep records of joint inspections. The record must include, at the most basic level, the fact that personnel performed an inspection of the joint. The record must include the location of each joint, and each joint must be identified with sufficient precision that personnel could subsequently locate and identify the joint without ambiguity. In addition, the record must clearly convey the results of the inspection of each joint, so that the personnel correcting the deficiencies will know what actions they must take. Finally, the record must include the remedial action required (if any) by the track owner's CWR plan. Subparagraph (i)(3)(B) provides that track owners must maintain these joint inspection records in accordance with § 213.241.

Section 213.241(b)

FRA has added § 213.119 to the list of sections in § 213.241(b), thereby requiring that inspections of joints made pursuant to § 213.119 comply with the inspection record requirements found in § 213.241(b).

Section 213.343(j)

Subpart G of Part 213 contains the track safety standards for train operations at track classes 6 and higher. Section 213.343 (which is found in subpart G) contains the CWR requirements for train operations at track classes 6 and higher. FRA is adding paragraph (j) to 213.343. It applies the joint bar inspection requirements in the revised 213.119 to train operations at track classes 6 and higher. Accordingly, § 213.343(j) states that track owners shall revise their CWR plans to include provisions for the inspection of joint bars in accordance with §§ 213.119(g) and (i)(3).

Appendix B to Part 213—Schedule of Civil Penalties

FRA made a minor change to the Schedule of Civil Penalties. Because FRA added a new paragraph to § 213.119, FRA adjusted the civil penalty schedule accordingly.

VI. Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under both Executive Order 128566 and DOT policies and procedures. 44 FR 11034; February 26, 1979.

As part of the regulatory impact analysis, FRA has assessed a quantitative measurement of costs and benefits expected from the implementation of this interim final rule. The major costs anticipated from implementing this IFR include: the modification of existing CWR plans, the modification of existing software to take an inventory, and the deterioration of safety on track other than that with CWR joints. The major benefit anticipated from implementing this IFR will be a decrease in rule-affected accidents.

The rule will result in an initial cost of $137,000. Depending upon the railroad's implementation, it may also result in an increase of some accidents of $20,000 per year and a decrease in rule-affected accidents of $790,000 per year, for a net decrease in accident costs of $770,000. This yields a net benefit of $653,000 in the first year and $770,000 per year in subsequent years.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (the Act) (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities. The U.S. Small Business Administration (SBA) stipulates in its ''Size Standards'' that the largest a railroad business firm that is ''for-profit'' may be, and still be classified as a ''small entity'' is 1,500 employees for ''Line-Haul Operating Railroads,'' and 500 employees for ''Switching and Terminal Establishments.'' ''Small entity'' is defined in the Act as a small business concern that is not independently owned and operated, and is not dominant in its field of operation. SBA's ''size standards'' may be altered by federal agencies after consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final policy, which formally establishes ''small entities'' as railroads that meet the line haulage revenue requirements of a Class III railroad. The revenue requirements are currently $20 million or less in annual operating revenue. The $20 million limit (which is adjusted by applying the railroad revenue deflator adjustment) is based on the Surface Transportation Board's (STB) threshold for a Class III railroad carrier. FRA uses the same revenue dollar limit to determine whether a railroad or shipper or contractor is a small entity.

In this IFR, there are approximately 200 small railroads that have CWR and are affected. FRA has adopted a phase-in to minimize the significant economic impact on these small entities. As FRA is publishing this rule as an IFR in order to comply with statutory requirements, FRA has not received any comments yet. FRA requests comments on this economic analysis and encourages small entities to comment on the impact on small entities.

C. Paperwork Reduction Act

The information collection requirements in this IFR have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The section that contains the new information collection requirements is noted and the estimated time to fulfill each of the other requirements is as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total amount burden hours	Total annual burden cost
213.4—Excepted Track					
—Designation of track as excepted	200 railroads	20 orders	15 minutes	5	$190
—Notification to FRA about removal of excepted track.	200 railroads	15 notifications	10 minutes	3	114
213.5—Responsibility of track owners	685 railroads	10 notifications	8 hours	80	3,040
213.7—Designation of qualified persons to supervise certain renewals and inspect track					
—Designations	685 railroads	1,500 names	10 minutes	250	9,500
—Designations (partially qualified) under paragraph (c) of this section.	685 railroads	250 names	10 minutes	42	1,596
213.17—Waivers	685 railroads	6 petitions	24 hours	144	5,472
213.57—Curves, elevation and speed limitations					
—Request to FRA for approval	685 railroads	2 requests	40 hours	80	3,040
—Notification to FRA with written consent of other affected track owners.	685 railroads	2 notifications	45 minutes	2	76
—Test Plans For Higher Curving Speeds.	1 railroad	2 test plans	16 hours	32	1,216
213.110—Gage Restraint Measurement Systems (GRMS)—Implementing GRMS—Notices & Reports.	685 railroads	10 notifications + 2 tech rpts.	45 min./4 hours	16	608
—GRMS Vehicle Output Reports	685 railroads	50 reports	5 minutes	4	152
—GRMS Vehicle Exception Reports	685 railroads	50 reports	5 minutes	4	152
—GRMS/PTLF—Procedures For Data Integrity.	685 railroads	4 proc. Docs.	2 hours	8	305
—GRMS Training Programs/Sessions	685 railroads	2 prog. + 5 sess.	16 hours	112	4,256
—GRMS Inspection Records	685 railroads	50 records	2 hours	100	3,800
213.119—Continuous welded rail (CWR), general					
(g) Written procedures for CWR (New)	239 railroads/ ASLRRA.	240 modif. proc.	3 hrs./1 hr.	320	0 (Included in IFA RIA) 667,652
—Alternate Procedures For Rail Joints (New).	239 railroads	7 letters + 7 proc.	30 min. + 953 hrs.	6,675	667,652
—Training Programs For CWR Procedures (New).	239 railroads/ ASLRRA.	240 training Prog.	2 hea./12 hours	490	18,620
—Record Keeping	239 railroads	2,000 records	10 minutes	233	12,654
—Record Keeping For CWR Rail Joints (New).	239 railroads	360,000 rcds.	2 minutes	12,000	456,000
—Periodic Records For CWR Rail Joints (New).	239 railroads	480,000 rcds.	1 minute	8,000	304,000
213.233—Track inspections	685 railroads	2,500 inspections	1 minute	42	1,512
213.241—Inspection records	685 railroads	1,542,089 rcds	Varies	1,672,941	60,225,876
213.303—Responsibility for Compliance	2 railroads	1 petition	8 hours	8	304
213.305—Designation of qualified individuals; general qualifications.	2 railroads	150 designations	10 minutes	25	950
—Designations (Partially qualified)	2 railroads	20 designations	10 minutes	3	114
213.317—Waivers	2 railroads	1 petition	24 hours	24	912
213.329—Curves, elevation and speed limitations					
—FRA approval of qualified equipment and higher curving speeds.	2 railroads	3 notifications	40 hours	120	4,560
—Written notification to FRA with written consent of other affected track owners.	2 railroads	3 notifications	45 minutes	2	76
2213.333—Automated Vehicle Inspection System.					
—Track Geometry Measurement System.	3 railroads	18 reports	20 hours	360	12,960
—Track/Vehicle Performance Measurement System:					
—Copies of most recent exception printouts.	2 railroads	13 printouts	20 hours	260	9,360
213.341—Initial inspection of new rail and welds					
—Mill inspection	2 railroads	2 reports	8 hours	16	608
—Welding plan inspection	2 railroads	2 reports	8 hours	16	608
—Inspection of field welds	2 railroads	125 records	20 minutes	42	1,596
213.343—Continuous welded rail (CWR)					
—Recordkeeping	2 railroads	150 records	10 minutes	25	950
213.345—Vehicle qualification testing	1 railroad	2 reports	16 hours	32	1,216

CFR section	Respondent universe	Total annual responses	Average time per response	Total amount burden hours	Total annual burden cost
213.347—Automotive or Railroad Crossings at grade—Protection Plans.	1 railroad	2 plans	8 hours	16	608
213.369—Inspection Records					
—Record of inspection	2 railroads	500 records	1 minute	8	288
—Internal defect inspections and remedial action taken.	2 railroads	50 records	5 minutes	4	144

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the function of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Robert Brogan via e-mail at *Robert.Brogan@fra.dot.gov.*

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Federal Railroad Administration, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Robert Brogan, Federal Railroad Administration, MS–25, 1120 Vermont Avenue, NW., Washington, 20590; or to Victor Angelo, Federal Railroad Administration, MS–35, 1120 Vermont Avenue, NW., Washington, 20590. Comments may also be sent electronically via e-mail to Mr. Brogan at *Robert.Brogan@fra.dot.gov* or to Mr. Angelo at *Victor.Angelo@fra.dot.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this IFR between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The IFR will respond to any OMB or public comments on the information collection requirements contained in this IFR.

FRA cannot impose a penalty on persons for violating information collection requirements, which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Environmental Impact

FRA has evaluated these revised track safety regulations in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. This IFR meets the criteria that establish this as a non-major action for environmental purposes.

E. Federalism Implications

FRA has analyzed this IFR in accordance with the principles and criteria contained in Executive Order 13132, issued on August 4, 1999, which directs Federal agencies to exercise great care in establishing policies that have federalism implications. *See* 64 FR 42355. This IFR will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. This IFR will not have federalism implications that impose any direct compliance costs on State and local governments. FRA believes that this IFR has no federalism implications, other than the preemption of state laws covering the subject matter of this IFR, which occurs by operation of law under 49 U.S.C. 20106 whenever FRA issues a rule or order.

F. Unfunded Mandate Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This IFR will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' See 66 FR 28355 (May 22, 2001). Under the Executive Order a ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this IFR in accordance with Executive Order 13211. FRA has determined that this IFR is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that

this IFR is not a ''significant energy action'' within the meaning of the Executive Order.

H. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc). You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects

Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Interim Final Rule

Issuance of Interim Final Rule; Request for Public Comment

The Administrative Procedure Act (5 U.S.C. 551 *et seq.*) requires that, before issuing a rule, the agency provide notice and the opportunity for public comment (§ 553(b)(3)(B)), except ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedures thereon are impracticable, unnecessary, or contrary to public interest.'' FRA finds that the delay inherent to normal notice and comment rulemaking would be impractical if FRA intends to fulfill the SAFETEA–LU statutory mandate that requirements be implemented within 90 days. FRA has acted both immediately to implement this mandate and has deferred other, conflicting work. FRA would be unable to meet the statutory requirement for prompt action if FRA were to issue a notice of proposed rulemaking, receive public comment, consider comments received, and prepare and issue a final rule. FRA also finds that further delay would be contrary to the public interest, given the strong safety concerns expressed by the underlying statute. FRA believes that Congress clearly intended that FRA issue this rule in so short a time period in order to help prevent additional train accidents caused by the failure of joints in CWR in the very near term. Allowing time for full notice and comment procedure would frustrate this intent and could potentially result in train accidents that would otherwise be avoided by adherence to the new requirements in this rule. The public interest clearly supports issuance of this IFR in order to avoid such consequences.

FRA requests comment on this IFR, and as required by § 20103(e) of the Federal Railroad Safety Act, as codified (49 U.S.C. 20101 *et seq.*), will provide an opportunity for oral comment if it is requested prior to the expiration of the comment period.

FRA has made this rule effective 30 days after the date of publication. Although FRA has considered making this rule effective immediately, FRA believes that railroads need time to prepare amendments to their CWR plans, to put administrative systems in order supporting this IFR, and to disseminate necessary information to their personnel effected by this rule. Making the rule effective within 30 days will expedite resolution of any petitions for reconsideration and hasten implementation of the rule. See 49 CFR 211.29. Note that the compliance date for placing the revised CWR plan in place is 60 days following the publication of this rule, allowing time for resolution of any petitions for reconsideration, including any necessary technical corrections pointed out by any such petition, while ensuring prompt implementation. The interval between the effective date and the compliance date also provides an opportunity for official review of any alternative implementations.

■ For the reasons discussed in the preamble, the Federal Railroad Administration amends part 213 of chapter II, subtitle B of Title 49, Code of Federal Regulations, as follows:

PART 213—[AMENDED]

■ 1. The authority citation for part 213 continues to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

■ 2. Section 213.119 is amended by revising the introductory language and paragraph (g) through (i) and by adding a new paragraph (j) to read as follows:

§ 213.119 Continuous welded rail (CWR); general

Each track owner with track constructed of CWR shall have in effect and comply with a plan that contains written procedures which address: the installation, adjustment, maintenance and inspection of CWR; inspection of joints in CWR; and a training program for the application of those procedures. The plan shall be submitted to the Federal Railroad Administration by March 22, 1999. FRA reviews each plan for compliance with the following—

* * * * *

(g) Procedures which prescribe the scheduling and conduct of physical track inspections to detect cracks and other indications of incipient failures in joints in CWR. This paragraph is effective January 3, 2006.

(1) At a minimum, these procedures shall address periodic and special on-foot inspection of joints and of the track adjacent to joints, in order to identify—

(i) Joint bars with visible or otherwise detectable cracks;

(ii) Loose, bent, or missing joint bolts;

(iii) Rail end batter or mismatch that contributes to impact loads and instability of the joint; and

(iv) Evidence of excessive longitudinal rail movement in or near the joint, including, but not limited to, wide rail gap, defective joint bolts, disturbed ballast, surface deviations, gap between tie plates and rail, or displaced rail anchors.

(2) In formulating the procedures under paragraph (g)(1) of this section, the track owner shall—

(i) Implement a system for identifying each joint by its location in track with sufficient precision that personnel can return to the joint and identify it without ambiguity;

(ii) List each joint in an inventory that will enable personnel to identify joints due for periodic inspection;

(iii) Specify the conditions of potential joint failure for which personnel must inspect, including, at a minimum, the items listed in paragraph (g)(1) of this section;

(iv) Specify the appropriate remedial actions, consistent with this part, that should be taken when personnel find conditions of potential joint failure; and

(v) Specify the timing of the inspections, which should be based on the configuration and condition of the joint. At a minimum, track owners must specify that all joints in CWR in track classes 4 and higher must be inspected before October 31, 2006 and within 190 days of the previous inspection hereafter; and all joints in CWR in track classes 3, and class 2 track on which passenger trains operate, must be inspected before April 30, 2007 and within 370 days of the previous inspection thereafter.

(3) In lieu of the requirements for the inspection of rail joints contained in paragraphs (g)(1) and (2) of this section, a track owner may seek approval from FRA to use alternate procedures.

(i) The track owner shall submit the alternate procedures and a supporting statement of justification to the Associate Administrator for Safety (Associate Administrator).

(ii) If the Associate Administrator finds that the alternate procedures

provide an equivalent or higher level of safety than the requirements in paragraphs (g)(1) and (g)(2) of this section, the Associate Administrator will approve the alternate procedures by notifying the track owner in writing. The Associate Administrator will specify in the written notification the date on which the procedures will become effective, and after that date, the track owner shall comply with the procedures. If the Associate Administrator determines that the alternate procedures do not provide an equivalent level of safety, the Associate Administrator will disapprove the alternate procedures in writing, and the track owner shall continue to comply with the requirements in paragraphs (g)(1) and (2) of this section.

(iii) While a determination is pending with the Associate Administrator on a request submitted pursuant to paragraph (g)(3) of this section, the track owner shall continue to comply with the requirements contained in paragraphs (g)(1) and (2) of this section.

(h) The track owner shall have in effect a comprehensive training program for the application of these written CWR procedures, with provisions for periodic re-training, for those individuals designated under § 213.7 as qualified to supervise the installation, adjustment, and maintenance of CWR track and to perform inspections of CWR track.

(i) The track owner shall prescribe recordkeeping requirements necessary to provide an adequate history of track constructed with CWR. At a minimum, these records must include:

(1) Rail temperature, location and date of CWR installations. This record shall be retained for at least one year;

(2) A record of any CWR installation or maintenance work that does not conform with the written procedures. Such record shall include the location of the rail and be maintained until the CWR is brought into conformance with such procedures;

(3) Information on inspection of rail joints.

(i) After the initial inspection of each joint in accordance with paragraph (g) of this section, the track owner must include in the record:

(A) The location of each joint in CWR with such precision that the joint can be located and identified in the field with no ambiguity;

(B) The results of the inspection of each joint; and

(C) Any remedial action required under the track owner's CWR plan.

(ii) Track owners shall maintain records required by paragraph (i)(3)(i) in accordance with § 213.241.

(j) As used in this section—

(1) *Adjusting/De-stressing* means the procedure by which a rail's temperature is re-adjusted to the desired value. It typically consists of cutting the rail and removing rail anchoring devices, which provides for the necessary expansion and contraction, and then re-assembling the track.

(2) *Buckling Incident* means the formation of a lateral mis-alinement sufficient in magnitude to constitute a deviation from the Class 1 requirements specified in § 213.55. These normally occur when rail temperatures are relatively high and are caused by high longitudinal compressive forces.

(3) *Continuous Welded Rail (CWR)* means rail that has been welded together into lengths exceeding 400 feet.

(4) *Desired Rail Installation Temperature Range* means the rail temperature range, within a specific geographical area, at which forces in CWR should not cause a buckling incident in extreme heat, or a pull-apart during extreme cold weather.

(5) *Disturbed Track* means the disturbance of the roadbed or ballast section, as a result of track maintenance or any other event, which reduces the lateral or longitudinal resistance of the track, or both.

(6) *Mechanical Stabilization* means a type of procedure used to restore track resistance to disturbed track following certain maintenance operations. This procedure may incorporate dynamic track stabilizers or ballast consolidators, which are units of work equipment that are used as a substitute for the stabilization action provided by the passage of tonnage trains.

(7) *Rail Anchors* means those devices which are attached to the rail and bear against the side of the crosstie to control longitudinal rail movement. Certain types of rail fasteners also act as rail anchors and control longitudinal rail movement by exerting a downward clamping force on the upper surface of the rail base.

(8) *Rail Temperature* means the temperature of the rail, measured with a rail thermometer.

(9) *Tight/Kinky Rail* means CWR which exhibits minute alinement irregularities which indicate that the rail is in a considerable amount of compression.

(10) *Train-induced Forces* means the vertical, longitudinal, and lateral dynamic forces which are generated during train movement and which can contribute to the buckling potential.

(11) *Track Lateral Resistance* means the resistance provided by the rail/crosstie structure against lateral displacement.

(12) *Track Longitudinal Resistance* means the resistance provided by the rail anchors/rail fasteners and the ballast section to the rail/crosstie structure against longitudinal displacement.

■ 3. Section 213.241(b) is revised to read as follows:

§ 213.241 Inspection records.

* * * * *

(b) Each record of an inspection under §§ 213.4, 213.119, 213.233, and 213.235 shall be prepared on the day the inspection is made and signed by the person making the inspection. Records shall specify the track inspected, date of inspection, location and nature of any deviation from the requirements of this part, and the remedial action taken by the person making the inspection. The owner shall designate the location(s) where each original record shall be maintained for at least one year after the inspection covered by the record. The owner shall also designate one location, within 100 miles of each state in which they conduct operations, where copies of records which apply to those operations are either maintained or can be viewed following 10 days notice by the Federal Railroad Administration.

■ 4. Section 213.343 is amended by adding a new paragraph (j) to read as follows:

§ 213.343 Continuous welded rail (CWR).

* * * * *

(j) Track owners shall revise their CWR plans to include provisions for the inspection of joint bars in accordance with §§ 213.119(g) and (i)(3).

■ 5. Appendix B to part 213 is amended by revising the entry for § 213.119 to read as follows:

Appendix B to Part 213—Schedule of Civil Penalties

Section	Violation	Willful violation
* * * * * * *		
§ 213.119 Continuous welded rail		
(a) through (i)	5,000	7,500
* * * * * * *		

Issued in Washington, DC, on October 26, 2006.

Joseph H. Boardman,

Federal Railroad Administrator.

[FR Doc. 05–21845 Filed 11–1–05; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 70, No. 211
Wednesday, November 2, 2005

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–47–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Pratt & Whitney (PW) JT9D series turbofan engines. That AD currently requires revisions to the Airworthiness Limitations Section (ALS) of the manufacturer's Instructions for Continued Airworthiness (ICA) to include required enhanced inspection of selected critical life-limited parts at each piece-part opportunity. This proposed AD would modify the JT9D series engines ALS sections of the manufacturer's manuals and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. We are proposing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: We must receive any comments on this proposed AD by January 3, 2006.

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

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Kevin Donovan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7743, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. 98–ANE–47–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

On April 12, 2002, we issued AD 2002–08–11, Amendment 39–12719 (67 FR 19663, April 23, 2002), to require revisions to the JT9D series engines ALS of the manufacturer's Instructions for Continued Airworthiness to include required enhanced inspection of selected critical life-limited parts at each piece-part opportunity.

New Inspection Procedures

Since we issued AD 2002–08–11, PW has added mandatory eddy current inspections (ECIs) for web cooling holes in high pressure turbine (HPT) stage 1 disks, installed in engine models JT9D–7R4, –7R4D1, –7R4E, –7R4E1 engines, and for HPT stage 2 disks installed in JT9D–7, –7A, –7H, –7AH, –7F, –7J, –20, and –20J engines. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures.

FAA's Determination and Requirements of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2002–08–11 to require:

- Adding ECIs for web cooling holes in HPT stage 1 disks installed in engine models JT9D–7R4, –7R4D1, –7R4E, –7R4E1 engines; and
- Adding ECIs for web cooling holes in HPT stage 2 disks installed in JT9D–7, –7A, –7H, –7AH, –7F, –7J, –20, and –20J engines; and
- Clarification of the inspections listed in the Inspection column of the Mandatory Inspections Table in this AD.

The proposed AD would incorporate the additional inspection requirements into the Airworthiness Limitations Section of the manufacturer's manuals and an air carrier's approved continuous airworthiness maintenance program.

Costs of Compliance

About 1,978 PW JT9D series turbofan engines of the affected design are in the worldwide fleet. We estimate that 837 of these engines are installed on U.S.-registered airplanes and would be affected by this proposed AD. We also estimate that about one work hour per engine is needed to perform the proposed actions, and that the average labor rate is $65 per work hour. Since this is an added inspection requirement that will be part of the normal maintenance cycle, no additional parts costs are involved. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $54,405.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify 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. Would 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 summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 98–ANE–47–AD'' in your request.

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 Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–12719 (67 FR 19663, April 23, 2002), and by adding a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 98–ANE–47–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by January 3, 2006.

Affected ADs

(b) This AD supersedes AD 2002–08–11, Amendment 39–12719.

Applicability

(c) This AD applies to Pratt & Whitney (PW) JT9D–3A, –7, –7A, –7H, –7AH, –7F, –7J, –20J, –59A, –70A, –7Q, –7Q3, –7R4D, –7R4D1, –7R4E, –7R4E1, –7R4E4, –7R4G2, and –7R4H1 series turbofan engines, installed on but not limited to Boeing 747 and 767 series, McDonnell Douglas DC–10 series, and Airbus Industrie A300 and A310 airplanes.

Unsafe Condition

(d) This AD results from the need to require enhanced inspection of selected critical life-limited parts of JT9D series turbofan engines. We are issuing this AD to prevent failure of critical life-limited rotating engine parts, which could result in an uncontained engine failure and damage to 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.

(f) Within the next 180 days after the effective date of this AD, revise the manufacturer's Instructions for Continued Airworthiness Airworthiness Limitations Section (ALS), and for air carrier operations revise the approved continuous airworthiness maintenance program by adding the following:

''MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Engine model	Engine manual part number (P/N)	Part nomenclature	Inspect per manual section	Inspection/check
7/7A/7AH/7F, 7H/7J/20/20J.	* 646028 (or the equivalent customized versions, 770407 and 770408).	All Fan Hubs	72–31–04	Inspection-02.
		All HPC Stage 5—15 Disks and Rear Compressor Drive Turbine Shafts.	72–35–00	Inspection-03.
		All HPT Stage 1—2 Disks and Hubs	72–51–00	Inspection-03.
		All HPT Stage 2 Disk Web Cooling Holes	71–51–02	Inspection-05.
		All LPT Stage 3—6 Disks and Hubs	72–52–00	Inspection-03.
59A/70A	754459	All Fan Hubs	72–31–00	Check-00.
		All HPC Stage 5—15 Disks and Rear Compressor Drive Turbine Shafts.	72–35–00	Check-00.
		All HPT Stage 1—2 Disks and Hubs	72–51–00	Check-03.
		All HPT Stage 1 Disk Web Cooling Holes	72–51–02	Check-03.
		All LPT Stage 3—6 Disks and Hubs	72–52–00	Check-03.
7Q/7Q3	777210	All Fan Hubs	72–31–00	Inspection-03.
		All HPC Stage 5—15 Disks and Rear Compressor Drive Turbine Shafts.	72–35–00	Inspection-03.
		All HPT Stage 1—2 Disks and Hubs	72–51–00	Inspection-03.
		All HPT Stage 1 Disk Web Cooling Holes	72–51–06	Inspection-03.
		All LPT Stage 3—6 Disks and Hubs	72–52–00	Inspection-03.
7R4	785058, 785059, and 789328.	All Fan Hubs	72–31–00	Inspection/Check-03.
		All HPC Stage 5—15 Disks and Rear Compressor Drive Turbine Shafts.	72–35–00	Inspection/Check 03.

Engine model	Engine manual part number (P/N)	Part nomenclature	Inspect per manual section	Inspection/check
		All HPT Stage 1—2 Disks and Hubs	72–51–00	Inspection/Check-03.
		All LPT Stage 3—6 Disks and Hubs	72–52–00	Inspection/Check-03.
7R4D/D1/E/E1	785058 and 785059	All HPT Stage 1 Disk Web Cooling Holes	72–51–06	Inspection/Check-02.

* P/N 770407 and 770408 are customized versions of P/N 646028 engine manual.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when done in accordance with the disassembly instructions in the manufacturer's engine manual; and

(ii) The part has accumulated more than 100 cycles-in-service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.''

Alternative Methods of Compliance

(g) You must perform these mandatory inspections using the ALS of the Instructions for Continued Airworthiness and the applicable Engine Manual unless you receive approval to use an alternative method of compliance under paragraph (h) of this AD. Section 43.16 of the Federal Aviation Regulations (14 CFR 43.16) may not be used to approve alternative methods of compliance or adjustments to the times in which these inspections must be performed.

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

Maintaining Records of the Mandatory Inspections

(i) You have met the requirements of this AD when you change the manufacturer's Instructions for Continued Airworthiness ALS specified in paragraph (f) of this AD, and, for air carriers operating under part 121 of the Federal Aviation Regulations (14 CFR part 121), when you modify your continuous airworthiness maintenance plan to reflect those changes. You do not need to record each piece-part inspection as compliance to this AD but you must maintain records of those inspections according to the regulations governing your operation. For air carriers operating under part 121, you may use either the system established to comply with section 121.369 or an alternative accepted by your principal maintenance inspector if that alternative:

(1) Includes a method for preserving and retrieving the records of the inspections resulting from this AD; and

(2) Meets the requirements of section 121.369(c); and

(3) Maintains the records either indefinitely or until the work is repeated.

(j) These record keeping requirements apply only to the records used to document the mandatory inspections required as a result of revising the ALS of the Instructions for Continued Airworthiness as specified in paragraph (f) of this AD, and do not alter or amend the record keeping requirements for any other AD or regulatory requirement.

Issued in Burlington, Massachusetts, on October 27, 2005.

Peter A. White,

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

[FR Doc. 05–21804 Filed 11–1–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–ANE–34–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc., (Formerly AlliedSignal, Inc. and Textron Lycoming) ALF502L Series and ALF502R Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD), AD 95–04–11, for Honeywell International Inc., (formerly AlliedSignal, Inc. and Textron Lycoming) ALF502L series and ALF502R series turbofan engines. That AD currently establishes stress rupture retirement life limits for certain third stage turbine discs used in conjunction with certain third stage turbine nozzles. This proposed AD would bring requirements forward and unchanged, from the previous AD for ALF502R series turbofan engines. Also, this proposed AD would establish new reduced stress rupture retirement life limits for certain part numbers (P/Ns) of third stage turbine disc and shaft assemblies installed in ALF502L series turbofan engines. This proposed AD would also require removing those same parts from service using a drawdown schedule. This proposed AD results from a report of failure of a third stage turbine disc and shaft assembly, leading to turbine blade release and separation of the exhaust nozzle. We are proposing this AD to prevent total loss of engine power, in-flight engine shutdown, release of turbine blades, separation of the exhaust nozzle, and possible damage to the airplane.

DATES: We must receive any comments on this proposed AD by January 3, 2006.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 92–ANE–34–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*.

Contact Honeywell Engines, Systems & Services, Customer Support Center, M/S 26–06/2102–323, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (800) 601–3099, for the service information identified in this proposed AD.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone: (562) 627–5245, fax: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. 92–ANE–34–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by

the closing date and may amend the proposed AD in light of those comments.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

On March 2, 1995, we issued AD 95–04–11, Amendment 39–9163 (60 FR 11621, April 3, 1995), applicable to ALF502L series and ALF502R series turbofan engines. That AD established stress rupture retirement life limits for certain third stage turbine discs used in conjunction with certain third stage turbine nozzles. That AD resulted from introduction of an improved design third stage turbine nozzle, and a new reduced stress rupture retirement life limit for certain third stage turbine discs on the ALF502L series engines. That condition, if not corrected, could result in total loss of engine power, in-flight engine shutdown, and possible damage to the airplane.

Actions Since AD 95–04–11 Was Issued

Since we issued that AD, we received a report of a third stage turbine disc and shaft assembly failure in an ALF502L–2C engine. The rim of the disc ruptured during airplane climb, resulting in release of turbine blades and separation of the exhaust nozzle. Honeywell International Inc. has also cited several other separation incidents of third stage turbine blades, resulting in airplane and engine damage. The third stage turbine disc and shaft assemblies involved in these events were all of the Honeywell Pre SB No. ALF502L 72–232 configuration.

Relevant Service Information

We have reviewed and approved the technical contents of Honeywell International Service Bulletin (SB) No. ALF502 72–0004, Revision 17, dated January 16, 2005. That SB establishes new reduced service life limits for third stage turbine disc and shaft assemblies installed in ALF502L series turbofan engines that have operated in the Pre SB No. ALF502L 72–232 configuration. That SB also describes procedures for calculating the remaining service life of certain third stage turbine disc and shaft assemblies that have operated in Pre and Post SB No. ALF502L 72–232 configurations.

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 products of this same type design. We are proposing this AD, which would require:

- Bringing requirements forward and unchanged from AD 95–04–11 for ALF502R series turbofan engines; and
- For ALF502L series turbofan engines, establishing new reduced service life limits for third stage turbine disc and shaft assemblies, P/N 2–143–030–05; P/N 2–143–030–08; P/N 2–143–030–14; P/N 2–143–030–R21; P/N 2–143–030–22; and P/N 2–143–030–23, that have operated in the Honeywell Pre SB No. ALF502L 72–232 configuration; and
- Removing those same parts from service using a drawdown schedule.
- Limiting the special flight permits for this AD by allowing a onetime special flight if the disc life limit has been reached.

The proposed AD would require that you calculate the remaining service life of certain third stage turbine disc and shaft assemblies using the service information described previously.

Costs of Compliance

There are about 180 Honeywell International, Inc. ALF502L, ALF502L–2, ALF502L–2A, ALF502L–2C, ALF502L–3, and ALF502R series turbofan engines of the affected design in the worldwide fleet. We estimate the proposed AD would affect 170 engines installed on airplanes of U.S. registry. We also estimate that it would take about 14 work hours per engine to perform the proposed actions, and that the average labor rate is $65 per work hour. The prorated cost of a replacement third stage turbine disc and shaft assembly is estimated to be $40,000. Based on these figures, we estimate the total labor cost of the proposed AD on U.S. operators to be $6,954,700.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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. Would 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 summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 92–ANE–34–AD'' in your request.

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 Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–9163 (60 FR 11621, April 3, 1995) and by adding a new airworthiness directive to read as follows:

Honeywell International Inc. (formerly AlliedSignal, Inc. and Textron Lycoming): Docket No. 92–ANE–34–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by January 3, 2006.

Affected ADs

(b) This AD supersedes AD 95–04–11, Amendment 39–9163.

Applicability

(c) This AD applies to Honeywell International Inc., (formerly AlliedSignal, Inc. and Textron Lycoming) ALF502L, ALF502L–2, ALF502L–2A, ALF502L–2C, and ALF502L–3 series turbofan engines with third stage turbine disc and shaft assemblies that have operated in the Honeywell Pre SB No. ALF502L 72–232 configuration. This AD also applies to ALF502R series engines. These engines are installed on, but not limited to, BAe Systems AVRO 146 and Bombardier (Canadair) CL600–1A11 series airplanes.

Unsafe Condition

(d) This AD results from a report of failure of a third stage turbine disc and shaft assembly, leading to turbine blade release and separation of the exhaust nozzle. We are issuing this AD to prevent total loss of engine power, in-flight engine shutdown, release of turbine blades, separation of the exhaust nozzle, and possible damage to 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.

ALF502L Series Turbofan Engines

Determination of Third Stage Turbine Disc and Shaft Assembly Drawdown Schedule

(f) For ALF502L series turbofan engines, determine if the third stage turbine disc and shaft assembly is currently operating in the Pre SB No. ALF502L 72–232 configuration as follows:

(1) If third stage turbine nozzle assembly, part number (P/N) 2–141–120R56/–57 is installed, then Honeywell SB No. ALF502L 72–232 has been complied with. Proceed to the drawdown schedule in paragraph (h) of this AD.

(2) If any other third stage turbine nozzle assembly is installed, then the engine is in the Pre SB No. ALF502L 72–232 configuration. Proceed to the drawdown schedule in paragraph (g) of this AD.

Drawdown Schedule for Third Stage Turbine Disc and Shaft Assemblies That Are Operating in the Pre SB No. ALF502L 72–232 Configuration

(g) For ALF502L series turbofan engines, use the drawdown schedule described in the following Table 1, and replace with serviceable parts:

TABLE 1.—DRAWDOWN SCHEDULE FOR THIRD STAGE TURBINE DISC AND SHAFT ASSEMBLIES IN PRE SB ALF502L 72–232 CONFIGURATION

For third stage turbine disc and shaft assembly P/Ns	If hours-in-service (HIS) on the effective date of this AD are	Then remove
2–143–030–05	(1) 5,200 or more HIS	Within 50 additional HIS.
2–143–030–08	(2) 5,001 to 5,199 HIS	Before reaching 5,250 HIS.
2–143–030–14	(3) 2,551 to 5,000 HIS	Within 250 additional HIS.
2–143–030R21	(4) 2,550 or fewer HIS	Before reaching 2,800 HIS.
2–143–030–22.		
2–143–030–23.		

Determination of Drawdown Schedule for Third Stage Turbine Disc and Shaft Assemblies That Have Operated in Pre and Post SB No. ALF502L 72–232 Configurations

(h) For ALF502L series turbofan engines, with third stage turbine disc and shaft assemblies converted from Pre SB No. ALF502L 72–232 configuration to Post SB No. ALF502L 72–232 configuration, do the following:

(1) Determine the total HIS accumulated on the third stage turbine disc and shaft assembly at time of installation of third stage turbine nozzle assembly, P/N 2–141–120–R56/–57.

(2) If the total is 2,800 HIS or more, use the drawdown schedule in Table 1 of this AD to remove the assembly from service.

(3) If the total is fewer than 2,800 HIS, calculate the remaining service life using paragraphs 2.A. through 2.B.(4)(i) of the Accomplishment Instructions of Honeywell SB No. ALF502 72–0004, Revision 17, dated January 16, 2005.

(i) For ALF502L series turbofan engines, use the drawdown schedule described in the following Table 2 to remove the assembly from service:

TABLE 2.—DRAWDOWN SCHEDULE FOR THIRD STAGE TURBINE DISC AND SHAFT ASSEMBLIES OPERATED IN PRE AND POST SB NO. ALF502L 72–232 CONFIGURATION

For third stage turbine disc and shaft assembly part numbers:	If HIS on the effective date of this AD are:	Then:
(1) 2–143–030–05, 2–143–030–08,2–143–030–14.	(i) 30,000 or more HIS	Remove within 50 additional HIS.
	(ii) 27,250 to 29,999 HIS	Remove within 250 additional HIS.
	(iii) Fewer than 27, 250 HIS	Remove using Tables 1 through 5 of Honeywell SB No. ALF502 72–0004, Revision 17, dated January 16, 2005.
(2) 2–143–030R21, 2–143–030–23	(i) 24,650 or more HIS	Remove within 50 additional HIS.
	(ii) 22,150 to 24,649 HIS	Remove within 250 additional HIS.
	(iii) Fewer than 22,150 HIS	Remove using Tables 1 through 5 of Honeywell SB No. ALF502 72–0004, Revision 17, dated January 16, 2005.
(3) 2–143–030–22	(i) 50,000 or more HIS	Remove within 50 additional HIS.
	(ii) 49,750 to 49,999 HIS	Remove within 250 additional HIS.
	(iii) Fewer than 49,750 HIS	Remove using Tables 1 through 5 of Honeywell SB No. ALF502 72–0004, Revision 17, dated January 16, 2005.

ALF502R Series Turbofan Engines

Requirements Brought Forward, and Unchanged From AD 95–04–11

(j) For ALF502R series turbofan engines, remove from service and replace with a serviceable part third stage turbine disks, P/Ns 2–143–030–05, 2–143–030–08, and 2–143–030–14, as follows:

(1) For disks that have been installed only with third stage turbine nozzles P/Ns 2–141–130–52 or 2–141–120–53, remove from service as follows:

(i) For disks that have accumulated 13,220 or more hours time in service (TIS) since new on April 13, 1995 (the effective date of AD 95–04–11), within the next 80 hours TIS after December 11, 1990, but not to exceed the existing cyclic life limit.

(ii) For disks that have accumulated less than 13,220 hours TIS since new on April 13, 1995, before accumulating more than 13,300 hours TIS since new, but not to exceed the existing cyclic life limit.

(iii) Thereafter, remove disks before accumulating more than 13,300 hours TIS since new, but not to exceed the existing cyclic life limit.

(2) For disks that have been installed only with third stage turbine nozzles, P/Ns 2–141–120–57 or 2–141–120–R56, remove from service as follows:

(i) For disks that have accumulated 27,420 or more hours TIS since new on April 13, 1995, within 80 hours TIS after April 13, 1995, but not to exceed the existing cyclic life limit.

(ii) For disks that have accumulated less than 27,420 hours TIS since new on April 13, 1995, before accumulating more than 27,500 hours TIS since new, but not to exceed the existing cyclic life limit.

(iii) Thereafter, remove disks before accumulating more than 27,500 hours TIS since new, but not to exceed the existing cyclic life limit.

(3) For disks that have been installed with both third stage turbine nozzles, P/Ns 2–141–120–52 or 2–141–120–120–53, and third stage turbine nozzles P/Ns 2–141–120–57 or 2–141–120–R56, remove from service as follows:

(i) Determine the prorated hourly life limit using the procedure defined in the Accomplishment Instructions, Section 2.B.(2) of Textron Lycoming SB No. ALF502 72–0002, Revision 22, dated December 21, 1992. From this prorated hourly life limit, subtract 80 hours TIS to determine the compliance threshold.

(ii) For disks that have equaled or exceeded the compliance threshold on April 13, 1995, within the next 80 hours TIS, but not to exceed the existing cyclic life limit.

(iii) For disks that have accumulated fewer than the compliance threshold on April 13, 1995, before accumulating more than the calculated prorated hourly life limit.

(iv) Thereafter, remove disks at or before accumulating the prorated hourly life limit, but not to exceed the existing cyclic life limit.

Alternative Methods of Compliance

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

Special Flight Permits

(l) Under 14 CFR part 39.23, we are limiting the special flight permits for this AD by allowing a onetime special flight if the disc life limit has been reached.

Related Information

(m) Honeywell SB No. ALF/LF A72–1085, Revision 1, dated January 16, 2005, pertains to the subject of this AD.

Issued in Burlington, Massachusetts, on October 27, 2005.

Peter A. White,

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

[FR Doc. 05–21802 Filed 11–1–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

User Input to the Aviation Weather Technology Transfer (AWTT) Board

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

ACTION: Proposed rule; notice of public meeting.

SUMMARY: The FAA will hold an informal public meeting to seek aviation weather user input on convective weather products. Details: November 10, 2005; Orlando Orange County Convention Center, 9800 International Drive, Room N210A, Orlando, Florida 32819, 1 p.m. to 5 p.m. The objective of this meeting is to provide an opportunity for interested Government and commercial sector representatives who use Government-provided aviation weather information in operational decision-making to provide input on FAA's plans for implementing new convective weather products.

DATES: The meeting will be held at the Orlando Orange County Convention Center, 9800 International Drive, Room N210A, Orlando, Florida 32819; Times: 1 p.m. to 5 p.m. on November 10, 2005.

FOR FURTHER INFORMATION CONTACT: Debi Bacon, Air Traffic Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone number (202) 385–7705; Fax: (202) 385–7701; e-mail: *debi.bacon@faa.gov.*

SUPPLEMENTARY INFORMATION:

History

In 1999, the FAA established an Aviation Weather Technology Transfer (AWTT) Board to manage the orderly transfer of weather capabilities and products from research and development (R&D) into operations. The Director of the National Airspace (NAS) Weather Office, Operations Planning, Air Traffic Organization chairs the AWTT Board. The board is composed of stakeholders in the Air Traffic and Aviation Safety organizations in the Federal Aviation Administration and the Office of Climate, Water and Weather Services, the Office of Science and Technology, and the National Center for Environmental Predictions (NCEP) in the National Weather Service.

The AWTT Board meets semi-annually or as needed to determine the readiness of weather R&D products for experimental use or full operational use for meteorologists or for end users. The board makes the determination based on technical and operational readiness, cost and benefits, user needs and budget considerations.

FAA has the sole responsibility and authority to make decisions intended to provide a safe, secure, and efficient U.S. national airspace system. However, it behooves FAA to not make decisions in a vacuum. Rather, FAA is seeking inputs from the user community before decisions are finalized.

Industry users are invited to participate in one-day meetings about three times per year to give specific feedback to the Government. Meetings will be focused on a specific domain (e.g. terminal, enroute) or specific weather phenomena (e.g. turbulence, convection). Meetings will include a time for users to provide input on specific weather products and aviation weather road maps and to surface issues or concerns with those products. The industry review sessions will be announced in the **Federal Register** and open to all interested parties.

This meeting is the industry session focused on convective weather products, roadmaps and research activities.

Meeting Procedures

(a) The meeting will be informal in nature and will be conducted by representatives of the FAA Headquarters.

(b) The meeting will be open to all persons on a space-available basis. Every effort was made to provide a meeting site with sufficient seating capacity for the expected participation. There will be neither admission fee nor other charge to attend and participate. This meeting is being held in conjunction with the NBAA Convention 2005. There is a charge to attend the NBAA convention; however, any person

desiring to attend this informal meeting will be admitted by NBAA convention officials to this meeting only, at no charge.

(c) FAA personnel will conduct overview briefings on aviation weather products, aviation weather roadmaps and the status of on-going research. Research leads from the convective weather product development team will conduct an overview briefing on the status of research efforts in the convective weather domain. Questions may be asked during the presentation and FAA personnel will clarify any part of the process that is not clear.

(d) FAA personnel will lead a session intended to elicit user views on the convective weather products and any issues surrounding those products. Any person present may offer comment or feedback in the session. Comments and feedback will be captured through discussion between FAA personnel and those persons attending the meeting.

(e) FAA will not take any action items from this meeting nor make any commitments to accept specific user suggestions. An official verbatim transcript of the meeting will not be made. However, a list of the attendees and a digest of discussions during the meeting will be produced and posted on a Web site. Instructions to access the Web site will be provided to all persons attending the meeting and provided to any who desire it.

(f) Every reasonable effort will be made to hear each person's feedback consistent with a reasonable closing time for the meeting. Written feedback is also solicited and may be submitted to FAA personnel for the period November 11–December 10, 2005.

Agenda

(a) Opening Remarks.

(b) Review of AWTT weather products, roadmaps and research efforts.

(c) Convective Weather Products and Issues Session.

(d) Closing Comments.

* * * * *

Issued in Washington, DC, on October 27, 2005.

Richard J. Heuwinkel,

Manager, Aviation Weather Policy and Standards.

[FR Doc. 05-21792 Filed 11–1–05: 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2005–22680; Airspace Docket No. 05–ASW–3]

RIN 2120–AA66

Proposed Establishment of Restricted Area 5601F; Fort Sill, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Restricted Area 5601F (R–5601F) at Fort Sill, OK. The United States (U.S.) Army requests that the FAA take action to establish R–5601F to provide additional airspace needed to support new high angle air-to-ground training requirements for Air Force, Navy, and Marine aircraft operating over the Falcon Bombing Range. This action would also enhance Fort Sill's ability to host joint training.

DATES: Comments must be received on or before December 19, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2005–22680 and Airspace Docket

No. 05-ASW–3, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2005–22680 and Airspace Docket No. 05–ASW–3) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2005–22680 and Airspace Docket No. 05–ASW–3.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person at the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2601 Meacham Blvd; Fort Worth, TX 76193–0500.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

History

On March 1, 2005, the U.S. Army requested that the FAA take action to establish R–5601F. Specifically, the requested action would provide additional airspace needed to support new high angle air-to-ground training

requirements for Air Force, Navy, and Marine aircraft operating over the Falcon Bombing Range. Specifically, R–5601F would provide additional maneuvering area needed for aircraft conducting training in adjacent restricted areas R–5601B and R–5601C which are located over the West Range Target Area and the Falcon Bombing Range, respectively. This action would also enhance Fort Sill's ability to host joint training.

The Proposal

At the request of the U.S. Army, the FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 73 to establish R–5601F adjacent to and north of R–5601B and R–5601C. Establishment of the new restricted area would provide additional airspace needed to support new high angle air-to-ground training requirements for Air Force, Navy, and Marine aircraft operating over the Falcon Bombing Range and would enhance Fort Sill's ability to host joint training.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subjected to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.56 [Amended]

2. Section 73.56 is amended as follows:

* * * * *

R–5601F Fort Sill, OK (New)

Boundaries. Beginning at lat. 34°46′24″ N., long. 98°52′00″ W.; thence clockwise via the 49 NM arc of SPS VORTAC to lat. 34°47′00″ N., long. 98°51′00″ W.; to lat. 34°43′46″ N., long. 98°49′55″ W.; thence clockwise via the 46 NM arc of SPS VORTAC to lat. 34°45′03″ N., long. 98°29′46″ W.; to lat. 34°46′15″ N., long. 98°25′01″ W.; to lat. 34°47′00″ N., long. 98°17′46″ W.; to lat. 34°46′45″ N., long. 98°17′01″ W.; to lat. 34°46′06″ N., long. 98°17′01″ W.; to lat. 34°46′06″ N., long. 98°21′01″ W.; to lat. 34°43′45″ N., long. 98°21′01″ W.; to lat. 34°43′30″ N., long. 98°21′21″ W.; to lat. 34°43′30″ N., long. 98°35′40″ W.; to lat. 34°45′00″ N., long. 98°40′31″ W.; to lat. 34°42′15″ N., long. 98°50′01″ W.; to the point of beginning. Excluding that airspace: (1) Below 5500 feet MSL beginning at lat. 34°44′28″ N., long. 98°46′16″ W.; thence clockwise via the 46 NM arc of SPS VORTAC to lat. 34°45′09″ N., long. 98°30′57″ W.; to lat. 34°43′30″ N., long. 98°30′00″ W.; to lat. 34°43′30″ N., long. 98°35′40″ W.; to lat. 34°45′00″ N., long. 98°40′31″ W.; to lat. 34°43′09″ N., long. 98°46′56″ W.; to the point of beginning; and, (2) below 3500 feet MSL within a 1 NM radius of lat. 34°46′46″ N., long. 98°17′46″ W.

Designated altitudes. 500 feet AGL to FL 400.

Times of Designation. Sunrise to 2200 local time, Monday–Friday; other times by NOTAM.

Controlling Agency. FAA, Fort Worth ARTCC.

Using Agency. Commanding General, United States Army Field Artillery Center (USAFACFS), Fort Sill, OK.

* * * * *

Issued in Washington, DC, October 27, 2005.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. 05–21878 Filed 11–1–05; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AB03

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Advance notice of proposed rulemaking; request for comment.

SUMMARY: Section 137 of the Energy Policy Act of 2005 requires the Commission to conduct a rulemaking to examine the effectiveness of current energy efficiency labeling requirements for consumer products issued pursuant to the Energy Policy and Conservation Act. In response to that directive, the Commission is seeking comments on the effectiveness of the Appliance Labeling Rule and suggestions for improvements to the energy labeling program. The Commission is also requesting comments about the overall costs and benefits of the Rule and its overall regulatory and economic impact as a part of the Commission's systematic review of all its regulations and guides.

DATES: Comments must be received by January 13, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Energy Labeling, Project No. R511994'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex O), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c).[1]

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with

Continued

Comments filed in electronic form should be submitted by clicking on the following Web link: *https://secure.commentworks.com/ftc-energylabeling* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the *https://secure.commentworks.com/ftc-energylabeling* Web link. You may also visit *http://www.regulations.gov* to read this advance notice of proposed rulemaking, and may file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments received by the Commission, whether filed in paper or in electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, (202) 326–2889, Division of Enforcement, Federal Trade Commission, 601 New Jersey Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Energy Policy Act of 2005

Section 137 of the Energy Policy Act of 2005 amends the Energy Policy and Conservation Act of 1975 (EPCA) [2] to require the Commission to initiate a rulemaking to consider ''the effectiveness of the consumer products labeling program in assisting consumers in making purchasing decisions and improving energy efficiency.'' As part of this effort, the Act directs the Commission to consider ''changes to the labeling rules (including categorical labeling) that would improve the effectiveness of consumer product labels.'' The Act gives the Commission 90 days to initiate the rulemaking and two years to complete it. To implement this directive, the Commission is seeking comments on the effectiveness of the FTC's energy labeling regulations for consumer products, generally referred to as the Appliance Labeling Rule (16 CFR part 305).

II. Energy Policy and Conservation Act Labeling Requirements

Section 324 of EPCA requires the FTC to prescribe labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for a variety of products covered by the statute, including home appliances (e.g., refrigerators, dishwashers, air conditioners, and furnaces), lighting, and plumbing products.[3] EPCA requires that labels for covered appliances disclose the estimated annual operating cost of such products, as determined by the Department of Energy (DOE) test procedures (42 U.S.C. 6294(c)).[4] The Commission, however, may require a different measure of energy consumption if DOE determines that the cost disclosure is not technologically feasible, or the Commission determines such a disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible. Section 324(c) also requires that the label contain information about the range of estimated annual operating costs (or energy consumption) for covered products. The Commission may also require the disclosure of energy information found on the label in any printed material displayed or distributed at the point of sale. In addition, the Commission may direct manufacturers to provide additional energy-related disclosures on the label (or information shipped with the product) including instructions for the maintenance, use, or repair of the covered product.

III. FTC's Appliance Labeling Rule

The Commission's Appliance Labeling Rule implements the requirements of EPCA by directing manufacturers to disclose energy information about major household appliances. This information enables consumers to compare the energy use or efficiency of competing models.[5] When initially published in 1979,[6] the Rule applied to eight appliance categories: refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. Since then, the Commission has expanded the Rule's coverage to include central air conditioners, heat pumps, fluorescent lamp ballasts, plumbing products, lighting products, and pool heaters and some other types of water heaters.[7]

Under the Rule, manufacturers must disclose specific energy consumption or efficiency information about their products at the point of sale in the form of an ''EnergyGuide'' label affixed to each unit. The information on the EnergyGuide label also must appear in catalogs and on internet sites from which covered products can be ordered. The Rule directs manufacturers to derive the information from standardized tests issued by DOE.

Required labels for appliances must also include a ''range of comparability'' (published by the Commission) that shows the highest and lowest energy consumption or efficiencies for all similar appliance models. These ranges of comparability are intended to help consumers determine how a specific model compares to others available in the market. Labels for most appliances must provide the product's estimated annual operating cost. Manufacturers must calculate these costs using national average cost figures for energy (e.g., electricity, natural gas, etc.) published by DOE. In addition to the required EnergyGuide labels, manufacturers of furnaces, central air conditioners, and heat pumps must provide cost information for their products in either fact sheets or an industry directory.

The Rule contains very specific requirements for the content and format of the EnergyGuide labels. Manufacturers cannot place any information on the label other than that

applicable law and the public interest. See 16 CFR 4.9(c).

[2] 42 U.S.C. 6291 *et seq.*

[3] 42 U.S.C. 6294. For most appliance products, the Commission must prescribe labeling rules unless it determines that labeling is not technologically or economically feasible (42 U.S.C. 6294(a)(1)). For central air conditioners, heat pumps, furnaces, and clothes washers, the statute requires labeling unless the Commission finds that labeling is not technologically or economically feasible or is not likely to assist consumers in making purchasing decisions (42 U.S.C. 6294(a)(2)(A)). Pursuant to § 6294(a)(1), the Commission determined not to require labeling for television sets, kitchen ranges, ovens, clothes dryers, humidifiers, dehumidifiers, and certain home heating equipment other than furnaces. *See* 44 FR 66466, 66468–66469 (Nov. 19, 1979).

[4] Section 323 of EPCA (42 U.S.C. 6293) directs DOE to develop test procedures for major household appliances. Manufacturers must follow these test procedures to determine their products' compliance with DOE's energy conservation standards (required by § 325 of EPCA), and to derive the energy consumption or efficiency values to put on required labels.

[5] More information about the Rule can be found at *http://www.ftc.gov/appliances.*

[6] 44 FR 66466 (Nov. 19, 1979).

[7] *See* 52 FR 46888 (Dec. 10, 1987) (central air conditioners); 59 FR 49556 (Sept. 28, 1994) (pool heaters); 54 FR 28031 (July 5, 1989) (fluorescent lamp ballasts); 58 FR 54955 (Oct. 25, 1993) (certain plumbing products); and 59 FR 25176 (May 13, 1994) (lighting products).

specifically allowed by the Rule. In 2000, the Commission issued an exemption allowing manufacturers to include the ''Energy Star'' logo on the EnergyGuide label for covered appliances (65 FR 17554 (Apr. 30, 2000)). Energy Star is a voluntary labeling program that identifies high efficiency products. The Environmental Protection Agency (EPA) and DOE administer the Energy Star program.[8]

The Commission's Rule contains certain reporting requirements which direct manufacturers for most covered products to file reports with the FTC annually and when they begin manufacturing new models. These reports must contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures (16 CFR 305.8(b)). Pursuant to section 305.10, the Commission publishes new ranges of comparability if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission publishes a statement each year that the prior ranges remain in effect for the next year.

The Rule has different labeling requirements for consumer products other than appliances (see 16 CFR 305.11(d), (e), & (f)). For example, manufacturers of fluorescent lamp ballasts and certain tube-type fluorescent bulbs must disclose an encircled ''E'' on ballasts and on luminaires containing ballasts, as well as on packaging. The ''E'' signifies compliance with DOE minimum efficiency standards. Manufacturers of showerheads, faucets, toilets, and urinals must disclose water usage information on the products, packaging and labeling. Manufacturers of certain incandescent bulbs, spot and flood bulbs, and screw-base compact fluorescent bulbs must disclose, on packaging, the light output in lumens, energy used in watts, voltage, average life, and number of bulbs. They also must explain how purchasers can select the most energy efficient bulb for their needs.

IV. Issues and Questions for Comment

As directed by the Energy Policy Act of 2005, the Commission is publishing this notice to seek comment on the effectiveness of the current appliance labeling requirements. The Commission has outlined below some specific issues and questions related to the current labeling program. These issues include the overall effectiveness of existing labeling requirements, the need for a new label design, and the benefits and costs of alternative label formats. The Commission is also seeking comments on other issues such as the energy descriptors used on current labels and energy disclosures for products not generally sold in showrooms. The Commission invites interested persons to submit written comments on any issue of fact, law or policy that may bear upon the FTC's current labeling requirements. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before January 13, 2006. After examining the comments received, the Commission will determine whether to propose for comment any specific amendments to the current requirements.

A. Effectiveness of Labeling Program

The original EnergyGuide label created by the Commission in 1979 contained three energy-related disclosures for most covered products: (1) The estimated annual operating cost of the model, (2) the range of operating costs for similar models displayed in the form of a bar graph, and (3) a grid which provided the operating cost of the model at different energy costs. In 1994, the Commission revised the label so that energy use or efficiency (as opposed to operating cost) appears as the primary descriptor on the label.[9] The revised labels continued to display cost information (for most products), but the cost figures were moved to the bottom half of the label. As part of the 1994 review of the Rule, the Commission conducted consumer research and made certain format changes to the EnergyGuide label as a result. These changes enhanced the appearance of the range and bar graph on the label in an effort to reduce consumer confusion (see Figure 1). The Commission has not conducted any consumer research about the effectiveness of the label or alternative formats since adopting those changes in 1994, and the same EnergyGuide label has been in use since that time.

In August 2002, the American Council for an Energy Efficient Environment (ACEEE) released a report that summarized research it had conducted on the EnergyGuide label's efficacy.[10] The research included manufacturer and consumer interviews, consumer focus groups, a mall intercept survey, and a simulated shopping experiment. According to ACEEE's report, the interviews and focus groups suggested that consumers are familiar with the EnergyGuide but their use of the label appears to be low. According to these interviews and focus groups, consumers found the label to be overly ''wordy, cluttered, and complex.'' ACEEE concluded that the EnergyGuide ''can be redesigned to improve consumer comprehension, encourage wider use of the label, and motivate consumers to consider energy use when purchasing a labeled appliance.'' [11]

ACEEE's 2002 report also examined several different formats and graphical elements for the EnergyGuide label. The ACEEE report considered various categorical labels (i.e., those using a step ranking system such as stars or letters to indicate relative energy use) and continuous labels (i.e., those containing a bar graph or similar item which displays information on a continuous scale without discrete ranks or categories). Among other things, the report recommended the adoption of a ''categorical'' label based on a star system (e.g., one to five stars). Various types of categorical labels are used in Europe, Australia, Brazil, Thailand, and other countries (see sample European Label at Figure 2).[12] According to ACEEE, the research suggested that categorical labels ''are easy to use and quick to decipher.'' Of the continuous label designs considered, ACEEE found that the bar graph with visible marks denoting the graph's scale ''appears most promising.'' [13] ACEEE's report found that most consumers preferred categorical labels over bar graphs and other ''continuous'' label designs.

To facilitate the Commission's efforts to consider the effectiveness of the

[8] See *http://www.energystar.gov.*

[9] The Commission concluded that the use of operating cost as the primary descriptor was not likely to assist consumers. It found, among other things, that changes in national average energy costs necessitated frequent changes to ranges of comparability which, in turn, could yield inconsistent cost information in showrooms. See 53 FR 22106, 22110 (Jun. 13, 1988) and 58 FR 12818, 12827 (Mar. 5, 1993).

[10] Thorne, Jennifer and Egan, Christine, ''An Evaluation of the Federal Trade Commission's EnergyGuide Label: Final Report and Recommendations,'' ACEEE, August 2002 [hereinafter ''ACEEE 2002 Report'']. The Report was funded in part by DOE, EPA, and other organizations. It is available online at *http://aceee.org/pubs/a021full.pdf.* The Commission has not determined what, if any, reliance it will place on the ACEEE's report (or any other labeling study) during this proceeding.

[11] *Id.* at v–vi.

[12] *See* Wiel, Stephen, and McMahon, James E., ''Energy-Efficiency Labels and Standards: A Guidebook for Appliances, Equipment, and Lighting, 2nd Edition,'' Collaborative Labeling and Appliance Standards Program (CLASP), 2005.

[13] The ACEEE report contains a sample label with such a bar graph (pp. vi and 27–28) in addition to many other sample labels featuring various bar graph and categorical designs. See *http://aceee.org/pubs/a021full.pdf.*

existing labeling program, we request that commenters consider the following questions: [14]

1. Do any recent reports, studies, or research provide data with which to estimate the benefits and costs of current consumer appliance energy labeling programs in the United States? In particular, have any such studies examined the effectiveness of the EnergyGuide label and alternative formats and approaches? Are there any recent studies from other countries that would be helpful for the Commission to consider?

2. How should the Commission measure the ''effectiveness'' of the appliance labeling program ''in assisting consumers in making purchasing decisions''? For example, should effectiveness be measured by consumer comprehension of specific label elements, consumer preference for different labels, the impact of labels on product choice, or other means?

3. How effective is the EnergyGuide label in providing consumers with useful, accurate information about the energy consumption or energy efficiency of covered products? What is the net benefit of the current EnergyGuide labels? Can appliance energy labels be modified to increase the net benefits of consumer energy labeling programs in the United States?

4. What is the effectiveness of the current EnergyGuide label in improving energy efficiency?

5. What has been the impact of the Energy Star program on the effectiveness of the EnergyGuide label and its usefulness for consumers?

6. Would changes to the current label design and format significantly improve or have a significant impact upon the effectiveness of the labels? How is the effectiveness of the EnergyGuide label affected by factors unrelated to label design (e.g., consumer priorities)?

7. What changes, if any, should be made to the current appearance of the EnergyGuide label (content, size, format, color, graphical presentation, etc.)?

8. Should the FTC change the EnergyGuide label to require a categorical design such as a star based label? Would a categorical design yield benefits for consumers? What would be the costs of implementing a categorical label system? How would the benefits of such a system compare to the costs?

9. Do commenters have views about the design, methodology, conclusions, or other aspects of the ACEEE 2002 report?

10. Would a categorical label design significantly improve energy efficiency? Would consumers interpret a categorical label as an indicia of product quality instead of energy performance or efficiency?

11. What criteria would the FTC need to use to assign a star rating to various models in specific product categories (i.e., criteria for a product to receive five stars, one star, etc.)? Would the stars be based on the DOE minimum efficiency standards, the range of energy consumption for models in a particular class, or some other measure? How would a star-based categorical label depict the required ranges? For example, would the lowest rating (i.e., one star) apply to the least efficient products in a product class category regardless of the number of products in the class and the efficiency of those products relative to DOE standards?

12. Would a categorical label require the FTC to make judgments about the relative energy efficiency of products in the market? If so, what information would the Commission need to make such judgments? How would it obtain the necessary information? What would be the costs of making such determinations?

13. Would a star based EnergyGuide label be duplicative of the Energy Star program? Would the star based label cause consumer confusion given the existence of the Energy Star program?

14. Section 305.19 of the Rule contains an exemption which allows manufacturers to place the Energy Star logo on the EnergyGuide label for qualified products. Under the exemption, the Energy Star logo must be placed ''above the comparability bar in the box that contains the applicable range of comparability.''

Should the Commission consider changes to that exemption (e.g., changes to the placement of the logo on the label)?

15. In addition to considering the categorical label as required by the Energy Policy Act of 2005, should the Commission consider other formats or graphical representations for the EnergyGuide label? Are there improvements that can be made to the current bar graph design in the EnergyGuide label?

B. Energy Descriptors For Various Products

Currently, EnergyGuide labels for most products provide information on the energy use (or efficiency) of the model, the range of energy use (or efficiency) in the market, and an estimated annual operating cost. The product labels display different energy information depending on the product. For example, refrigerator labels contain energy use information in the form of kilowatt-hours per year while room air conditioners display energy efficiency information through an Energy Efficiency Ratio (EER). In addition, labels for central air conditioning units, heat pumps, furnaces, and pool heaters do not contain cost information.

To aid the Commission in considering possible Rule changes for this issue, we request that commenters consider the following questions:

1. Are the current energy descriptors understandable to consumers? What changes, if any, should be made to the energy descriptors used on the EnergyGuide label?

2. Should the FTC consider requiring estimated annual operating costs as the primary descriptor on EnergyGuide labels in lieu of energy consumption or energy efficiency information? What are the costs and benefits of requiring operating costs as the primary descriptor?

3. Should the Commission consider different energy descriptors for existing products? For instance, should the clothes washer label disclose the model's efficiency rating using the measure currently required by DOE (the ''Modified Energy Factor'') instead of the product's annual energy consumption?

C. Disclosures for Central Air Conditioning, Heat Pumps, and Furnaces

The Commission is also interested in current labeling requirements for products that generally do not appear in showrooms where consumers can compare labels on competing models. Such products include central air conditioning units, heat pumps, and furnaces.[15] The Commission seeks comment on whether there are alternatives to labeling that would more effectively communicate energy efficiency information to consumers for such products. Although the Rule requires manufacturers to disclose energy information for these products through means other than labels, such as fact sheets and directories (see 16 CFR 305.11(b)), it is unclear whether such methods provide helpful information for consumers. Fact sheets contain detailed information that may

[14] Where appropriate, the Commission requests enough detail about data, study design, statistical analysis, and findings to enable the FTC to understand the methodology that was used to conduct the analysis.

[15] *See,* e.g., 44 FR at 66470 (Nov. 19, 1979) (''The majority of furnace purchases are made either in the consumer's home or as part of the consumer's purchase of a home. As a result, few consumers have an opportunity to see a display model before the furnace is installed.'').

not be easy to understand such as cost charts, regional heating and cooling maps, and equations related to the energy performance. In addition, most industry members provide cost information in industry directories instead of preparing fact sheets. It is unclear whether consumers normally consult these industry directories in making their purchasing decisions. To aid the Commission in evaluating these existing requirements, the Commission seeks information on the following questions:

1. How do consumers generally receive information about the energy efficiency of central air conditioners, heat pumps, and furnaces?

2. Are EnergyGuide labels on central air conditioners, heat pumps, and furnaces assisting consumers in their purchasing decisions? If not, should the Commission consider an alternative method of ensuring that consumers have access to useful efficiency information for these products?

3. Should the Commission consider changes to the current fact sheet requirements for central air conditioners, heat pumps, and furnaces?

4. Are there any alternative or additional forms of information (such as brochures, catalogs, or information sheets) that the FTC could require at the point of sale that would help consumers in making their purchasing decisions for these products?

D. Reporting Requirements

Section 326(b) of EPCA requires manufacturers to notify the Commission of new models they produce and also directs them to file an annual report with energy consumption information about their products. The annual report information is available on the FTC Web site at *http://www.ftc.gov/appliancedata.* To aid the Commission in considering possible changes to the Rule's reporting requirements, we request that commenters consider the following questions:

1. What changes, if any, should be made to the specific information covered by existing reporting requirements in the Rule? Would such changes improve the effectiveness of the labeling program for consumers?

2. Is there additional product information that the FTC should require, consistent with its statutory authority, in reports from manufacturers? What are the costs and benefits of requiring such additional information? Are there reporting requirements that the FTC should eliminate from the Rule (consistent with current statutory requirements)?

E. Annual Revisions to the Ranges of Comparability

As discussed above, the EnergyGuide label must contain a range of comparability that shows the highest and lowest energy consumption or efficiencies for all similar appliance models. EPCA does not specify when the Commission must change the ranges, but states it cannot do so ''more often than annually.'' 42 U.S.C. 426(c). The Commission's regulations indicate that the FTC will revise ranges annually, if appropriate (16 CFR 305.10). For some products, such as dishwashers, the Commission has changed the applicable ranges several times over the last few years. When the Commission changes the ranges, manufacturers must amend their labels to reflect the new ranges and update the operating costs on the labels using a new national average cost of electricity. Frequent range changes can cause the labels on different models in the same showroom to display inconsistent range and cost information because the models on display may have been manufactured at different times. This may be confusing to consumers. Frequent range revisions also impose a burden on manufacturers because they must change their product labels. To aid the Commission in considering possible Rule changes for this issue, we request that commenters consider the following questions:

1. Are changes in the energy use of products in the market significant enough to warrant an examination of the ranges of comparability every year?

2. Should the Commission consider amending the Rule so that the FTC examines the comparability ranges less often than annually? If so, how often should the Commission examine the ranges? Would such a change affect the effectiveness of the labeling program?

3. Are there ways to alleviate potential consumer confusion caused when certain product labels display new range and cost information and other models in the same showroom have labels displaying old range and cost information?

F. Lighting and Plumbing Products

What changes, if any, should be made to existing labeling requirements for lighting and plumbing products in 16 CFR part 305? What are the costs and benefits of any proposed labeling changes for lighting and plumbing products?

V. Regulatory Review

The Commission conducts scheduled reviews of its rules and guides in an effort to seek information about their costs and benefits and regulatory and economic impact. The regulatory review of the Appliance Labeling Rule had been scheduled for 2008. The Commission is combining that scheduled regulatory review with the present rulemaking required by the Energy Policy Act of 2005. Accordingly, in addition to the specific questions listed above, the Commission is also soliciting general comments on, among other things, the economic impact of and the continuing need for the Rule; possible conflicts between the Rule and State, local, or other Federal laws; and the effect on the Rule of any technological, economic or other industry changes.

The Commission is interested in receiving data, surveys and other empirical evidence to support comments submitted in response to this notice. As part of the regulatory review, the Commission is particularly interested in receiving comments and supporting data in response to the following questions:

(A) What benefits, if any, has the Rule provided to consumers of products covered by the Rule?

(B) What changes, if any, should be made to the Rule to increase the benefits of the Rule to consumers? How would these changes affect the costs the Rule imposes on industry members?

(C) What significant burdens or costs, if any, including costs of compliance, has the Rule imposed on industry members subject to its requirements? Has the Rule provided benefits to such industry members?

(D) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on industry members subject to its requirements? How would these changes affect the benefits provided by the Rule?

(E) Does the Rule overlap or conflict with other Federal, State, or local laws or regulations?

(F) Since the Rule was issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rule?

(G) What significant burdens or costs, if any, including costs of compliance, has the Rule imposed on small businesses subject to its requirements? How do these burdens or costs differ from those imposed on larger businesses subject to the Rule's requirements?

(H) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on small businesses? How would these changes affect the benefits of the Rule? Would such changes adversely affect the competitive position of larger businesses?

(I) Are there any other costs or benefits associated with the Rule?

List of Subjects in 16 CFR Part 305

Advertising, Consumer protection, Energy conservation, Household appliances, Labeling, Lamp products, Penalties, Reporting and recordkeeping requirements.

BILLING CODE 6750–01–P

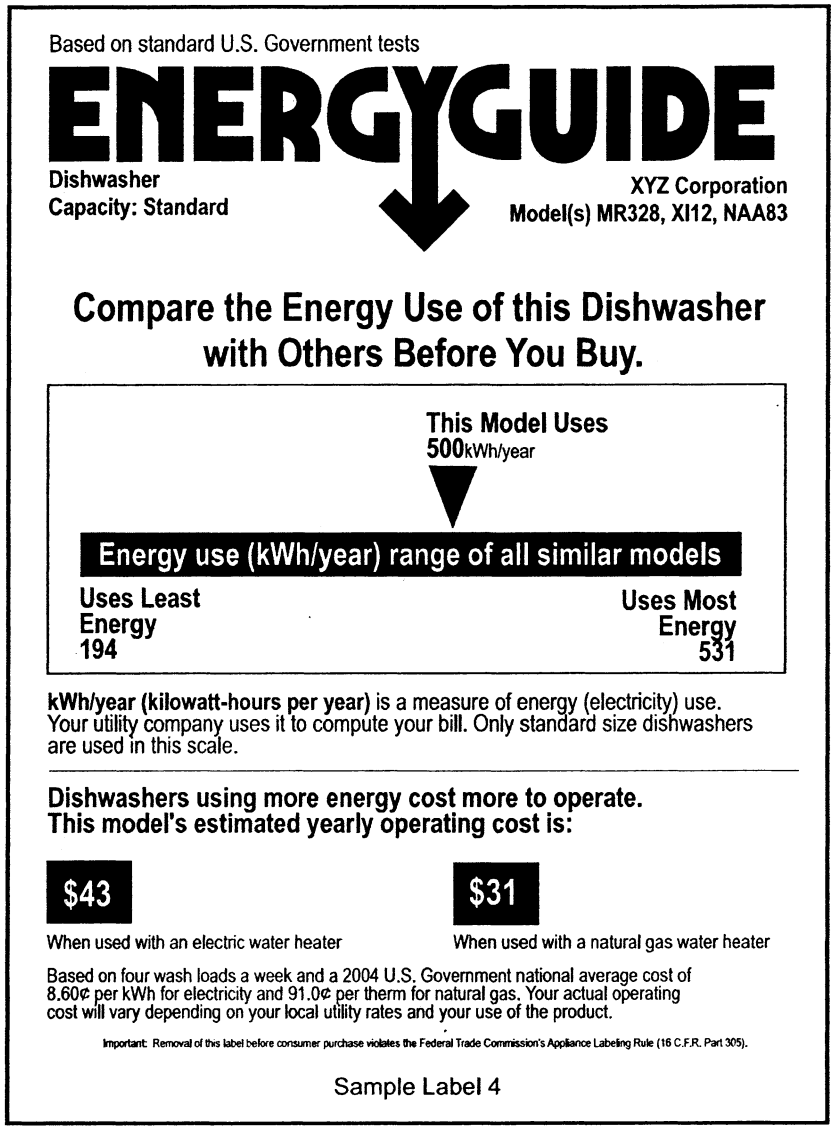

FIGURE 1 - (Current EnergyGuide Label - Sample)

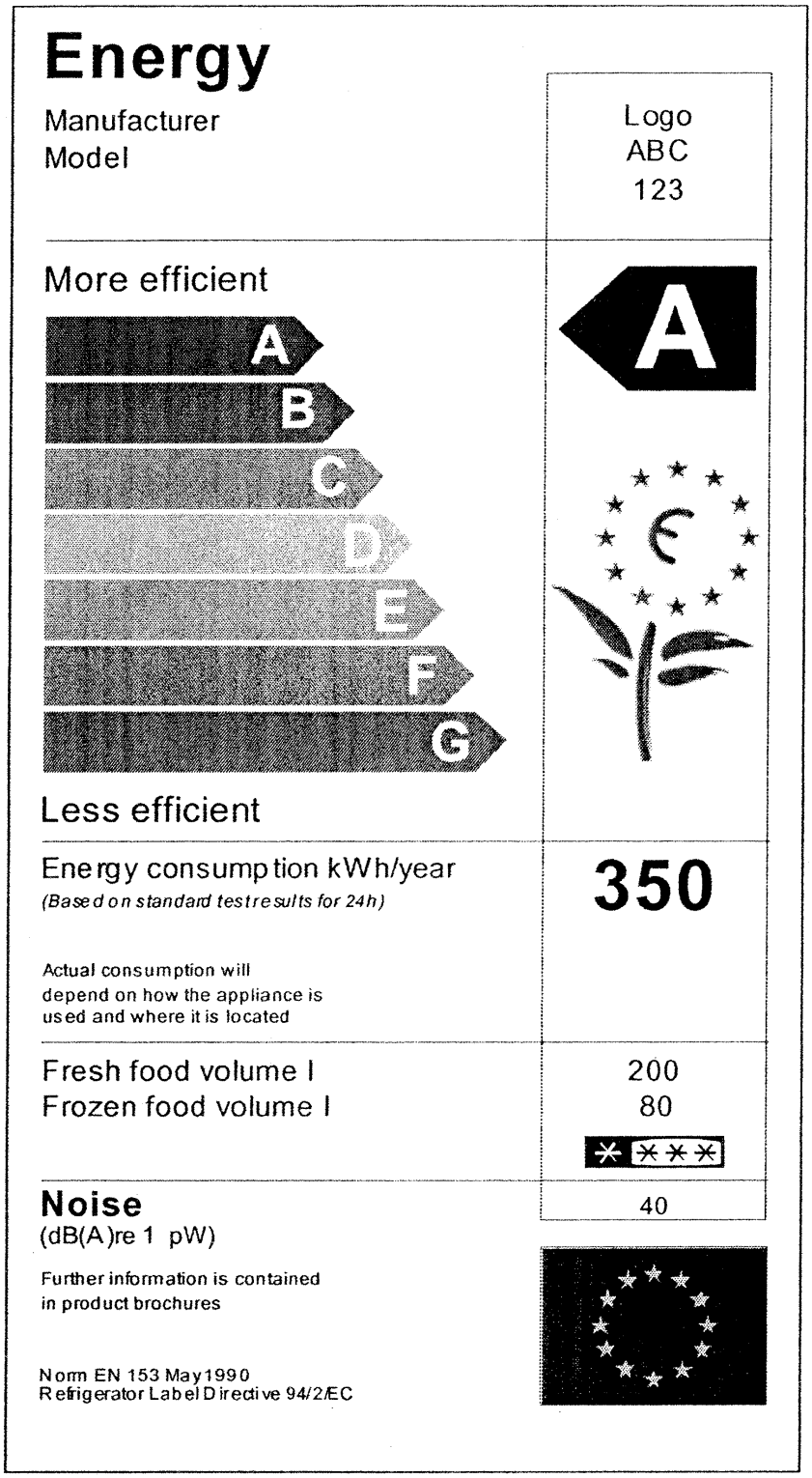

FIGURE 2 (European Categorical Label - Sample)

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–21817 Filed 11–1–05; 8:45 am]

BILLING CODE 6750–01–C

DEPARTMENT OF DEFENSE

Defense Contract Audit Agency

32 CFR Part 317

Privacy Act; Implementation

AGENCY: Defense Contract Audit Agency.

ACTION: Proposed rule.

SUMMARY: The Defense Contract Audit Agency (DCAA) is proposing to update the DCAA Privacy Act Program Rules, 32 CFR, Part 317, by deleting references to a cancelled publication and by adding guidance concerning the blanket exemption for classified material.

DATES: Comments must be received on or before January 3, 2006 to be considered by this agency.

ADDRESSES: Send comments to Senior Advisor, Defense Contract Audit Agency, Information and Privacy, CM, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6201.

FOR FURTHER INFORMATION CONTACT: Ms. Debbie Teer at (703) 767–1002.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 317

Privacy.

Accordingly, 32 CFR part 317 is proposed to be amended as follows:

PART 317—DCAA PRIVACY ACT PROGRAM

1. The authority citation for 32 CFR part 317 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a)

§ 317.4 [Amended]

2. Amend § 317.4 as follows:

a. Remove paragraph (c)(5).

b. Redesignate paragraphs (c)(6), (c)(7), and (c)(8) as (c)(5), (c)(6), and (c)(7).

3. Amend part 317 by adding § 317.7 as follows:

§ 317.7 Exemptions.

All systems of records maintained by DCAA will be exempt from the requirements of 5 U.S.C. 552a(d) and (e)(4)(H) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958, that is required by the Executive Order to be kept secret in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary since certain record systems, not otherwise specifically designated for exemptions herein, may contain isolated items of information which have been properly classified.

Dated: October 27, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–21783 Filed 11–1–05; 8:45 am]

BILLING CODE 5001–06–M

POSTAL SERVICE

39 CFR Part 111

Bundling Flat-Size and Irregular Parcel Mail—Bundle Integrity

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes that mailers use two bands to secure all bundles of presorted rate flat-size mail and irregular parcels that are not shrinkwrapped. This proposal would remove the option to secure bundles up to 1 inch thick with only one band.

DATES: We must receive your comments on or before December 2, 2005.

ADDRESSES: Mail or deliver comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza SW., Rm. 3436, Washington, DC 20260–3436. You may inspect and photocopy all written comments between 9 a.m. and 4 p.m., Monday through Friday, at USPS Headquarters Library, 11th Floor North, 475 L'Enfant Plaza SW., Washington, DC 20260.

FOR FURTHER INFORMATION CONTACT: Bill Chatfield at 202–268–7278.

SUPPLEMENTARY INFORMATION: We are proposing a revision to *Mailing Standards of the United States Postal Service, Domestic Mail Manual* (DMM) that would require mailers to use at least two bands—one around the length and one around the girth—when only banding is used to secure bundles of flat-size and irregular parcel mailpieces.

''Bundle integrity''—the ability of bundles to remain intact—is crucial for our new, high-speed Automated Package Processing System (APPS). Bundles with only one band tend to curl up and allow mailpieces to escape the bundle. When these or other bundles break open, we lose the value of mailers' presort, and we have to handle individual pieces manually. Manual

handling of mailpieces from broken or loose bundles results in delayed delivery and increases our processing costs.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. of 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service, Domestic Mail Manual* (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM) as explained below.

300 Discount Flats

* * * * *

330 First-Class Mail

* * * * *

335 Mail Preparation

* * * * *

2.0 Bundles

* * * * *

2.4 Securing Bundles

[Revise introductory text and items a, b, and c as follows; delete items d through f. Make these same changes to 345.2.4 (for Standard Mail flats), 365.2.4 (for Bound Printed Matter flats), 375.2.4 (for Media Mail flats), 385.2.4 (for Library Mail flats), 435.2.5 (for First-Class Mail parcels), 465.2.4 (for Bound Printed Matter parcels), 475.2.4 (for Media Mail parcels), 485.2.4 (for Library Mail parcels), 705.8.5.10 (for bundles on pallets), and 707.19.4 (for Periodicals).]

Mailers must meet the following standards when preparing and securing bundles.

a. Secure bundles with banding, shrinkwrap, or shrinkwrap supplemented with one or more bands. Banding includes plastic bands, rubber bands, twine, string, and similar material.

b. Mailers using only banding to secure bundles must meet the following conditions.

1. Use at least one band to encircle the length of the bundle and use at least one band to encircle the girth of the bundle.

2. Use tension sufficient to tighten and depress the edges of the bundle so pieces will not slip out of the banding during transit and processing.

3. Do not place any bands closer than 1 inch from any bundle edge.

4. When using twine or string to band bundles, secure the knot(s) so the banding does not come loose during transit and processing.

5. Do not use wire or metal banding.

6. Do not use any loose banding.

c. Bundles must withstand normal transit and handling without breaking and without causing injury to postal employees or damage to Postal Service equipment.

* * * * *

340 Standard Mail

* * * * *

345 Mail Preparation

* * * * *

2.0 Bundles

* * * * *

2.5 Preparing Bundles in Sacks

(Revise introductory text and item b as follows. Make these same changes in 707.19.8 (for Periodicals).)

Mailers must meet the following standards when preparing and securing bundles placed in sacks.

* * * * *

b. Secure bundles with at least two bands (plastic bands, rubber bands, twine, or string), one around the length and one around the girth. As options, secure bundles entirely with shrinkwrap, or with shrinkwrap plus one or two bands.

* * * * *

400 Discount Parcels

* * * * *

440 Standard Mail

* * * * *

445 Mail Preparation

* * * * *

2.0 Bundles

* * * * *

(Switch 2.5 and 2.4. Revise new 2.4 using the text in 335.2.4 above; revise new 2.5 using the text in 345.2.5 above.)

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

8.0 Preparation for Pallets

* * * * *

8.5 General Preparation

* * * * *

(Revise title of 8.5.10 as follows.)

8.5.10 Securing Bundles on Pallets

(Replace text in 8.5.10 with text from new 335.2.4.)

(Delete 8.5.11; renumber 8.5.12 and 8.5.13 as new 8.5.11 and 8.5.12.)

* * * * *

We will publish an appropriate amendment to 39 CFR 111.3 if the proposal is adopted.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 05–21777 Filed 11–1–05; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R08–OAR–2005–UT–0006; FRL–7992–7]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Provo Attainment Demonstration of the Carbon Monoxide Standard, Redesignation to Attainment, Designation of Areas for Air Quality Planning Purposes, and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Utah. On April 1, 2004, the Governor of Utah submitted an attainment demonstration and plan for the Provo metropolitan area (hereafter, Provo area) for the carbon monoxide (CO) National Ambient Air Quality Standard (NAAQS) to replace the demonstration and plan that were submitted by Governor Leavitt on July 11, 1994. The Governor's submittal also contained a request to redesignate the Provo area to attainment for the CO NAAQS and a maintenance plan which includes transportation conformity motor vehicle emission budgets (MVEB) for 2014 and 2015. The Governor also submitted revisions to: Utah's Rule R307–110–12, ''Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide,'' which incorporates the attainment

demonstration, plan, and maintenance plan; Utah's Rule R307–110–31, ''Section X, Vehicle Inspection and Maintenance Program, Part A,'' which incorporates general requirements and applicability for motor vehicle emissions inspections; and Utah's Rule R307–110–34, ''Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County,'' which incorporates a revised vehicle inspection and maintenance program for Utah County. The Governor's April 1, 2004 submittal also stated that the prior July 11, 1994 submittal of Utah's Rule R307–1–4.12, ''Emissions Standards for Residential Solid Fuel Burning Devices and Fireplaces'' to restrict woodburning in Utah County, remains part of her April 1, 2004 submittal and requested that Utah's Rule R307–301, ''Oxygenated Gasoline Program,'' be eliminated from the Federally-approved SIP. We note that on September 20, 1999, the Governor submitted Utah Rules R307–302–3 and –4, which together comprise a re-numbered and re-titled version of R307–1–4.12. The text of Rules R307–302–3 and –4 is identical to the text of Rule R307–1–4.12 that the Governor submitted on July 11, 1994.

EPA is proposing to approve the Provo area's attainment demonstration and plan, the request for redesignation to attainment for the Provo area, the maintenance plan, the transportation conformity MVEBs for 2014 and 2015, the revisions to Rule R307–110–12, the revisions to Rule R307–110–31, the revisions to Rule R307–110–34, Rules R307–302–3 and –4, and the request to remove Rule R307–301 from the Federally-approved SIP. EPA is also identifying the transportation conformity MVEB for the year 2000, which is derived from the attainment year emission inventory in the attainment plan. This action is being taken under section 110 of the Clean Air Act.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Written comments must be received on or before December 2, 2005.

ADDRESSES: Submit your comments, identified by RME Docket Number R08–OAR–2005–UT–0006, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://docket.epa.gov/rmepub/index.jsp.* Regional Materials in EDOCKET (RME), EPA's electronic public docket and comment system for regional actions, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *long.richard@epa.gov* and *russ.tim@epa.gov.*
- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 200, Denver, Colorado 80202–2466.
- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 200, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 200, Denver, Colorado 80202–2466, phone (303) 312–6436, and e-mail at: *russ.tim@epa.gov*

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of the **Federal Register**.

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

Dated: October 24, 2005.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 05–21836 Filed 11–1–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R03–OAR–2005–VA–0007; FRL–7993–1]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Redesignation of the City of Fredericksburg, Spotsylvania County, and Stafford County Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. The Virginia Department of Environmental Quality (VADEQ) is requesting that the City of Fredericksburg, Spotsylvania County, and Stafford County (the Fredericksburg area) be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). In conjunction with its redesignation request, the Commonwealth submitted a State Implementation Plan revision consisting of a maintenance plan for the Fredericksburg area that provides for continued attainment of the 8-hour ozone NAAQS for the next 10 years. EPA is proposing to make a determination that the Frdericksburg area has attained the 8-hour ozone NAAQS. This proposed determination is based on three years of complete, quality-assured ambient air quality monitoring data for 2002–2004 that demonstrate the 8-hour NAAQS has been attained in the area. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that the Fredericksburg area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). EPA is providing information on the status of its adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the 8-hour maintenance plan for the Fredericksburg area for purposes of transportation conformity, and is also proposing to approve those MVEBs. EPA is proposing approval of the

redesignation request and of the maintenance plan revision to the Virginia SIP in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before December 2, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–VA–0007 by one of the following methods:

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

Agency Web site: *http://docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

E-mail: *morris.makeba@epa.gov.*

Mail: R03–OAR–2005–VA–0007, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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 RME ID No. R03–OAR–2005–VA–0007. 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are 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 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 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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Amy Caprio, (215) 814–2156, or by e-mail at *caprio.amy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we'' , ''us'', or ''our'' is used, we mean EPA.

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I. What Actions Is EPA Proposing to Take?

On May 2, 2005, VADEQ formally submitted a request to redesignate the Fredericksburg area to attainment of the 8-hour NAAQS for ozone. On May 4, 2005, Virginia submitted a maintenance plan for the Fredericksburg area as a SIP revision, to ensure continued attainment over the next 10 years. The Fredericksburg area is composed of the City of Fredericksburg, Spotsylvania County, and Stafford County. It is currently designated as a moderate 8-hour ozone nonattainment area. EPA is proposing to determine that the Fredericksburg area has attained the 8-hour ozone NAAQS and that it has met the requirements for redesignation pursuant to section 107(d)(3)(E) of the CAA. EPA is, therefore, proposing to approve the redesignation request to change the designation of the Fredericksburg area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the maintenance plan SIP revision for the area (such approval being one of the CAA requirements for approval of a redesignation request). The maintenance plan is designed to ensure continued attainment in the Fredericksburg area for the next 10 years. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOC) and nitrogen oxides (NO_X) for the Fredericksburg area for transportation conformity purposes.

II. What Is the Background for These Proposed Actions?

A. General

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC react in the presence of sunlight to form ground-level ozone. The air pollutants NO_X and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the attainment and maintenance of the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. EPA designated, as nonattainment, any area violating the 8-hour ozone NAAQS based on the air quality data for the three years of 2001–2003. These were the most recent three years of data at the time EPA designated 8-hour areas. The Fredericksburg area was designated as moderate 8-hour ozone nonattainment status in a notice signed on April 25, 2004 and published on April 30, 2004 (69 FR 23857), based on its exceedance of the 8-hour health-based standard for ozone during the years of 2001–2003.

The CAA, title I, part D, contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive requirements for nonattainment areas for any pollutant—including ozone—governed

by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other areas are also subject to the provisions of subpart 2. Under EPA's 8-hour ozone implementation rule, signed on April 15, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.*, the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in the CAA for subpart 2 requirements). All other areas are covered under subpart 1, based upon their 8-hour design values. In 2004, the Fredericksburg area was designated a moderate 8-hour ozone nonattainment area based on air quality monitoring data from 2001–2003, and is subject to the requirements of both subparts 1 and 2.

Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered). See 69 FR 23857 (April 30, 2004) for further information. Ambient air quality monitoring data for the 3-year period must meet data completeness requirements. The data completeness requirements are met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of 40 CFR part 50. In 2004, the ambient ozone data for the Fredericksburg area indicated no further violations of the 8-hour ozone standard, using data from the 3-year period of 2002–2004 with a design value of 0.084 ppm. Available preliminary monitoring data through September 30, 2005 indicates continued attainment of the 8-hour ozone standard.

B. The Fredericksburg Area

The Fredericksburg 8-hour ozone nonattainment area consists of the City of Fredericksburg, Spotsylvania County, and Stafford County. Prior to designation as an 8-hour ozone nonattainment area, the City of Fredericksburg and Spotsylvania County were designated attainment for the 1-hour ozone NAAQS, as part of the North Eastern Virginia Intrastate (Air Quality Control Region 224) area. Stafford County, on the other hand, was part of the Metropolitan Washington, DC 1-hour ozone nonattainment area (the Washington area), and therefore was subject to requirements for both serious and severe 1-hour ozone nonattainment areas pursuant to sections 182(c) and 182(d) of the Clean Air Act.[1]

On May 2, 2005, the Commonwealth of Virginia requested redesignation to attainment for the 8-hour ozone standard for the Fredericksburg area. The redesignation request included three years of complete, quality-assured data for the period of 2002–2004, indicating that the 8-hour NAAQS for ozone had been achieved for the Fredericksburg area. The data satisfies the CAA requirements when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. Under the CAA, a nonattainment area may be redesignated if sufficient complete, quality-assured data is available to determine that the area has attained the standard and the area meets the other CAA redesignation requirements set forth in section 107(d)(3)(E).

C. Prior Proposed Rulemaking Actions

On September 12, 2005 (70 FR 53746), EPA proposed approval of a redesignation request and maintenance plan submitted by the Commonwealth of Virginia for the Fredericksburg area. On September 30, 2005 (70 FR 57238), EPA withdrew the September 12, 2005 proposed rule and stated that EPA would re-propose approval of the redesignation of the Fredericksburg area and the associated maintenance plan, and provide an expanded discussion as to why the redesignation request for this area is approvable under the CAA. In this notice of proposed rulemaking, EPA is re-proposing approval of the redesignation of the Fredericksburg area and the associated maintenance plan as announced in the September 30, 2005 withdrawal notice.

III. What Are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA, allows for redesignation, providing that:

(1) EPA determines that the area has attained the applicable NAAQS;

(2) EPA has fully approved the applicable implementation plan for the area under section 110(k);

(3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and

(5) The state containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

- ''Ozone and Carbon Monoxide Design Value Calculations'', Memorandum from Bill Laxton, June 18, 1990;
- ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
- ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
- ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
- ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
- ''Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
- ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting

[1] EPA reclassified the Washington area from serious nonattainment to severe nonattainment for the 1-hour ozone NAAQS on January 24, 2003. See 68 FR 3410 (January 24, 2003) for the reclassification and 56 FR 56694 (November 6, 1991) for the original classification.

Assistant Administrator for Air and Radiation, September 17, 1993;

• Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' dated November 30, 1993;

• ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

• ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

Relevant rulemakings also include EPA's Final Rule to Implement the 8-Hour Ozone NAAQS—Phase 1 and the Notice of Reconsideration thereof. See 69 FR 23951 (April 30, 2004) and 70 FR 30592, 30604 (May 26, 2005).

IV. Why Is EPA Taking These Actions?

On May 2, 2005, the VADEQ requested redesignation of the Fredericksburg area to attainment for the 8-hour ozone standard. On May 4, 2005, the VADEQ submitted a maintenance plan for the Fredericksburg area as a SIP revision, to assure continued attainment over the next 10 years. EPA has determined that the Fredericksburg area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E).

V. What Would Be the Effect of These Actions?

Approval of the redesignation request would change the designation of the Fredericksburg area from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Virginia SIP a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in the Fredericksburg area for the next 10 years. The maintenance plan includes contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies the NO_X and VOC MVEBs for transportation conformity purposes for the years 2004, 2009 and 2015. These MVEBs are displayed in the following table:

TABLE 1.—MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER DAY (TPD)

Year	NO_X	VOC
2004	19.742	11.298
2009	13.062	8.346
2015	7.576	7.334

VI. What Is EPA's Analysis of the Commonwealth's Request?

EPA is proposing to determine that the Fredericksburg area has attained the 8-hour ozone standard and that all other redesignation criteria have been met. The following is a description of how the VADEQ's May 2, 2005 and May 4, 2005 submittals satisfy the requirements of section 107(d)(3)(E) of the CAA.

A. The Fredericksburg Area Has Attained the 8-Hour Ozone NAAQS

EPA is proposing to determine that the Fredericksburg area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of Part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within the area over each year must not exceed the ozone standard of 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in Aerometric Information Retrieval System (AIRS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

In the Fredericksburg area, there is one ozone monitor, located in Stafford County, that measures air quality with respect to ozone. As part of its redesignation request, Virginia submitted ozone monitoring data for the years 2002–2004 (the most recent three years of data available as of the time of the redesignation request). This data has been quality assured and is recorded in AIRS. The fourth high 8-hour daily maximum concentrations, along with the three-year average, are summarized in Table 2.

TABLE 2.—FREDERICKSBURG AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES STAFFORD COUNTY STATION NO. 44–1, AIRS ID 511790001

Year	Annual 4th high reading (ppm)
2002	0.094
2003	0.085
2004	0.073
The average for the 3-year period 2002 through 2004 is 0.084 ppm.	

The data for 2002–2004 show that the area has attained the standard, and preliminary data for the 2005 ozone season show that the area continues to attain the standard. The data collected at the Stafford County monitor satisfies the CAA requirement that the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 parts per million (ppm). The VADEQ's request for redesignation for the Fredericksburg area indicates that the data was quality assured in accordance with 40 CFR part 58. The VADEQ uses AIRS as the database to maintain its data and quality assures the data transfers and content for accuracy. In addition, as discussed below with respect to the maintenance plan, Virginia has committed to continue monitoring in accordance with 40 CFR part 58. In summary, EPA has determined that the data submitted by Virginia indicates that the area has attained the 8-hour ozone NAAQS.

B. The Fredericksburg Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and the Area Has a Fully Approved SIP Under Section 110(k) of the CAA

EPA has determined that Virginia has met all SIP requirements for the Fredericksburg area applicable for purposes of redesignation under Section 110 of the CAA (General SIP Requirements) and that it meets all applicable SIP requirements under Part D of Title 1 of the CAA, in accordance with Section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained what requirements are applicable to the area, and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the

CAA. We note that SIPs must be fully approved only with respect to applicable requirements. The September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA. *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

1. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to, the following:

- Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the implementation of Part C requirement (Prevention of Significant Deterioration (PSD));
- Provisions for the implementation of Part D requirements for New Source Review (NSR) permit programs;
- Provisions for air pollution modeling; and
- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants in accordance with the NO_X SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO_X SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR), May 12, 2005 (70 FR 25161). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The Commonwealth will still be subject to these requirements after the Fredericksburg area is redesignated. The section 110 and Part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirements, as well as with the policy on the applicability of section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings 61 FR 53174–53176 (October 10, 1996), (62 FR 24816, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at 60 FR 62748, (December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR 50399, October 19, 2001). Similarly, with respect to the NO_X SIP Call rules, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO_X SIP Call rules are not ''an 'applicable requirement' for purposes of section 110(l) because the NO_X rules apply regardless of an area's attainment or nonattainment status for the 8-hour (or the 1-hour) NAAQS.'' 69 FR 23951, 23983 (April 30, 2004).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, because, as explained below, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to submission of the redesignation request. Therefore EPA concludes that Virginia has satisfied the criterion of section 107(d)(3)(E) regarding section 110 of the Act.

2. Part D Nonattainment Area Requirements Under the 1-Hour Standard and EPA's Anti-Backsliding Rules

Stafford County is the only locality in the Fredericksburg area that was subject to ozone requirements for 1-hour ozone nonattainment areas. As noted previously, prior to its designation as an 8-hour ozone nonattainment area, Stafford County was a part of the Metropolitan Washington, DC 1-hour ozone nonattainment area, and therefore, subject to SIP requirements for serious and severe ozone nonattainment areas pursuant to sections 182 (c) and (d) of the CAA. While, on June 15, 2005, the 1-hour standard was revoked, 40 CFR 50.9(b), under EPA's anti-backsliding rules, areas designated nonattainment for the 1-hour standard at the time of the 8-hour ozone designations remained subject to certain control measures that applied by virtue of the area's classification for the 1-hour ozone NAAQS. (40 CFR 51.900 et seq., see also 70 FR 30592, 30604, May 26, 2005). The applicable Part D 1-hour ozone standard requirements for purposes of redesignation are those that continue to apply under EPA's anti-backsliding rules, which were promulgated in conjunction with the implementation of the 8-hour NAAQS. (40 CFR 51.900 et seq., as amended 70 FR 30592, 30604 (May 26, 2005)).

EPA's 8-hour NAAQS implementation rule in 40 CFR 51.905(a)(1) prescribes the 1-hour NAAQS requirements that continue to apply after revocation of the 1-hour NAAQS to former 1-hour ozone nonattainment areas, such as Stafford County. Section 51.905(a)(1)(i) provides that:

> The area remains subject to the obligation to adopt and implement the applicable

requirements as defined in section 51.900(f), except as provided in paragraph (a)(1)(iii) of this section, and except as provided in paragraph (b) of this section. * * *

Section 51.900(f), as amended by 70 FR 30592, 30604 (May 26, 2005), states that:

Applicable requirements means for an area the following requirements to the extent such requirements apply or applied to the area for the area's classification under section 181(a)(1) of the CAA for the 1-hour NAAQS at designation for the 8-hour NAAQS:

(1) Reasonably available control technology (RACT).

(2) Inspetion and maintenance programs (I/M).

(3) Major source applicability cut-offs for purposes of RACT.

(4) Rate of Progress (ROP) reductions.

(5) Stage II vapor recovery.

(6) Clean fuels fleet program under section 183(c)(4) of the CAA.

(7) Clean fuels for boilers under section 182(e)(3) of the CAA.

(8) Transportation Control Measures (TCMs) during heavy traffic hours as provided under section 182(e)(4) of the CAA.

(9) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA.

(10) Transportation control measures (TCMs) under section 182(c)(5) of the CAA.

(11) Vehicle miles traveled (VMT) provisions of section 182(d)(1) of the CAA.

(12) NO_X requirements under section 182(f) of the CAA.

(13) Attainment demonstration or an alternative as provided under section 51.905(a)(1)(ii).

Pursuant to 40 CFR 51.905(c), only the Stafford County portion of the Fredericksburg area is subject to the obligations set forth in 51.905(a) and 51.900(f). At the time Stafford County was designated nonattainment for the 8-hour standard, it was part of a 1-hour nonattainment area classified as severe. Therefore, two of the elements—clean fuels for boilers under section 182(e)(3) and TCMs during heavy traffic hours as provided under section 182(e) are not applicable requirements for the Stafford County portion of the Fredericksburg area. The following paragraphs discuss how the applicable requirements have been met.

With respect to RACT and the major source applicability cut-offs for purposes of RACT, EPA has fully approved Virginia's SIP for the Washington 1-hour ozone nonattainment area as meeting the requirements of sections 182(b)(2), 182(c) and 182(f) of the CAA. On March 12, 1997 (62 FR 11332), EPA fully approved Virginia's VOC RACT regulation SIP revision for control technique guideline (CTG) sources and for non-CTG sources which have an applicability threshold of 25 tons per year (tpy) or more. On January 2, 2001 (66 FR 8), EPA fully approved Virginia's NO_X RACT regulation SIP revision which had a major source applicability threshold of 50 tpy or more. On August 9, 2004 (69 FR 48150), EPA fully approved Virginia's SIP revision that lowered the major source applicability threshold for its NO_X RACT (and Part D NSR) regulations to 25 tpy. EPA has fully approved Virginia's SIP revisions consisting of source category and individual source RACT determinations.[2] See 62 FR 11332 (March 12, 1997); 62 FR 11334 (March 12, 1997); 64 FR 3425 (January 22, 1999); 66 FR 8 (January 2, 2001); 69 FR 48150 (August 9, 2004); 69 FR 54578 (September 9, 2004); 69 FR 54600 (September 9, 2004); 69 FR 59812 (October 6, 2004); and, 69 FR 72115 (December 13, 2004).

On September 1, 1999 (64 FR 47670), EPA fully approved Virginia's I/M program to meet the enhanced program required in the Washington 1-hour ozone nonattainment area under section 182(c)(3) of the CAA.

EPA has fully approved Virginia's SIP revisions that demonstrate ROP reductions required in the Washington 1-hour ozone nonattainment area. On October 6, 2000 (65 FR 59727), EPA approved Virginia's plan to achieve the 15 percent reduction in VOC emissions in the Washington area that was required under section 182(b) of the CAA. On May 13, 2005 (70 FR 25688), EPA fully approved Virginia's ROP plan to achieve further ROP reductions in the Washington, area by 1999, 2002 and 2005 that were required of serious and severe 1-hour ozone nonattainment areas under section 182(c)(2) of the CAA.

On June 23, 1994 (59 FR 32353), EPA approved Virginia's Stage II vapor recovery program required in the Washington 1-hour ozone nonattainment area under section 182(b)(2) of the CAA.

On December 28, 1999 (64 FR 72564), EPA fully approved Virginia's SIP revision which substituted a national low emission vehicle (NLEV) program for the clean fuel fleet program required in the Washington 1-hour ozone nonattainment area under section 182(c)(4) of the CAA.

On September 11, 1995, (60 FR 47081), EPA fully approved Virginia's SIP revision consisting of an enhanced ambient monitoring program required in the Washington 1-hour ozone nonattainment area under section 182(c)(1) of the CAA.

Within six years of November 15, 1990, and every three years thereafter, section 182(c)(5) requires States to submit a demonstration of whether current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant parameters (collectively ''relevant parameters'') are consistent with those used for the area's demonstration of attainment for serious and above 1-hour ozone nonattainment areas. If the levels of relevant parameters that are projected in the attainment demonstration are exceeded, a State has 18 months to develop and submit a revision of the applicable implementation plan to include TCMs to reduce emissions to a level consistent with emissions levels in the attainment demonstration for the area.

Alternatively, EPA has determined that nonattainment areas are not permanently locked into the estimates of future emissions given in the initial SIP submittal, nor locked into those in any subsequently approved amendment thereto. As we stated in the General Preamble, once approved, the amended SIP revision would have the effect of increasing the allowable motor vehicle emissions (including those due to changes in the relevant parameters). See 57 FR 13498 at 13520 (April 16, 1992). Thus if actual emissions exceed those projected in an area's attainment demonstration, a State may at any time before the area reaches attainment, amend the area's SIP to demonstrate attainment while altering the mix of emissions reductions in its SIP from various kinds of sources (motor vehicle versus non-motor vehicle), rather than include TCMs in the SIP.

On August 19, 2003, Virginia submitted a SIP revision consisting of a demonstration that the Washington 1-hour ozone nonattainment area would attain the 1-hour ozone NAAQS by November 15, 2005. See 70 FR 25688 (May 13, 2005). This SIP revision contained information on the relevant parameters current as of June 2003. On February 25, 2004, Virginia submitted as a SIP revision a revised attainment demonstration and plan for the Washington 1-hour ozone nonattainment area which also showed that the Washington 1-hour ozone nonattainment area would attain the 1-hour ozone NAAQS by November 15, 2005. See 70 FR 25688 (May 13, 2005). That February 25, 2004 SIP revision contained information on the relevant parameters current as of November 23, 2003. On May 13, 2005 (70 FR 25688), EPA fully approved Virginia's February

[2] Certain sources located in Stafford County applied for and received Federally Enforceable State Operating Permits (FESOPs) from VADEQ which limited their emissions of VOC and NO_X below the RACT applicability thresholds. After redesignation, those FESOPs will remain applicable requirements of the Virginia SIP.

25, 2004 attainment demonstration and plan SIP revision for the Washington 1-hour ozone nonattainment. In the February 25, 2004 SIP revision, the relevant parameters remained consistent with the demonstration of attainment by relying on a mix of emissions reductions from motor vehicle and non-motor vehicle emission reduction without need to resort to TCMs.

EPA therefore concludes that Virginia has complied with the substance of section 182(c)(5), has no currently due 182(c)(5) obligations, and by virtue of EPA's approval of the February 25, 2004 attainment demonstration and plan SIP revision, has never triggered an obligation under 182(c)(5) to include TCMs in its SIP for the Washington 1-hour ozone area. Additionally, in line with EPA's guidance and policy regarding what is an applicable Part D requirement under section 107 of the CAA that was discussed previously in this document, EPA believes that any future activities, which may be required under section 182(c)(5), *e.g.*, the next or subsequent triennial demonstration of the relevant parameters, for the former Washington 1-hour ozone nonattainment area did not come due before Virginia submitted its redesignation request and therefore are not applicable Part D requirements with respect to the approval of Virginia's request to redesignate the Fredericksburg area to attainment of the 8-hour ozone NAAQS.

On May 13, 2005 (70 FR 25688), EPA fully approved Virginia's SIP revision for the Washington 1-hour ozone nonattainment area that implemented the VMT provisions of section 182(d)(1) of the CAA.

With respect to NO_X requirements under section 182(f) of the CAA, as discussed above, EPA has fully approved Virginia's SIP revision implementing the NO_X RACT requirements in the Washington 1-hour ozone nonattainment area. For the Stafford County portion of the Fredericksburg area, EPA has fully approved, pursuant to section 110(k), Virginia's Part D NSR program that meets the requirements for a severe ozone nonattainment area set under Part D of Title I of the CAA. The Virginia Part D NSR program covers major sources of NO_X as well as VOC. See 64 FR 51047 (September 21, 1999); 65 FR 21315 (April 21, 2000); and, 69 FR 48150 (August 9, 2004).

On August 9, 2004 (69 FR 48150), EPA fully approved Virginia's SIP revision that lowered the major source applicability threshold for its NO_X RACT (and Part D NSR) regulations to 25 tpy.

On May 13, 2005 (70 FR 25688), EPA fully approved Virginia's 1-hour ozone attainment demonstration SIP revision for the Washington 1-hour ozone nonattainment area.

In its May 2, 2005 redesignation request, Virginia identified certain SIP revisions as pending before EPA. As explained previously, EPA has since approved all those SIP revisions which are applicable Part D requirements. The remainder of these SIP revisions are not needed to fulfill an applicable Part D requirement for the Fredericksburg area. These other non-Part D SIP revisions propose to amend the Virginia SIP. EPA will approve these SIP revisions only if they meet the applicable requirements of the CAA and EPA's regulations, including but not limited to EPA's rules for the transition from the 1-hour to the 8-hour NAAQS under 40 CFR part 51, subpart X.

Thus EPA believes that Virginia has met all applicable Part D requirements under the 1-hour standard for purposes of redesignation under the 8-hour standard.

3. Part D Nonattainment Area Requirements Under the 8-Hour Standard

The Fredericksburg area was designated a moderate nonattainment area for the 8-hour ozone standard. Sections 172–176 of the CAA, found in subpart 1 of Part D, set forth the basic nonattainment requirements for all nonattainment areas. Section 182 of the CAA, found in subpart 2 of Part D, establishes additional specific requirements depending on the area's nonattainment classification. For a moderate nonattainment area for the 8-hour ozone standard, such as the Fredericksburg area, section 182(b) sets forth requirements. Section 184 also sets forth additional requirements for Stafford County, due to its location within the Ozone Transport Region (OTR). With respect to the 8-hour standard, EPA proposes to determine that the Virginia SIP meets all applicable SIP requirements under Part D of the CAA, because no 8-hour ozone standard Part D requirements applicable for purposes of redesignation became due prior to submission of the area's redesignation request.

In addition to the fact that Part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, EPA believes it is reasonable to interpret the conformity, NSR, and OTR requirements as not requiring approval prior to redesignation.

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (''transportation conformity'') as well as to all other Federally supported or funded projects (''general conformity''). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See *Wall* v. *EPA,* 265 F. 3d 426, 438–440 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (Dec. 7, 1995, Tampa FL).

EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without Part D NSR in effect, since PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D NSR Requirements or Areas Requesting Redesignation to Attainment.'' Virginia has demonstrated that the area will be able to maintain the standard without Part D NSR in effect in the City of Fredericksburg and Spotsylvania County, and therefore, Virginia need not have a fully approved Part D NSR program prior to approval of the redesignation request. Virginia's PSD program will become effective in the area upon redesignation to attainment in the City of Fredericksburg and Spotsylvania County. See rulemakings for Detroit, MI (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorrain, OH (61 FR 20458, 20469–70, May 7, 1996); Louisville, KY (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

As to Stafford County, which is located in the OTR, nonattainment NSR requirements will continue to be applicable. EPA has also interpreted the section 184 OTR requirements,

including NSR, as not being applicable for purposes of redesignation. The rationale for this is based on two factors. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore the Commonwealth remains obligated to have NSR, as well as RACT, and Vehicle I/M programs in Stafford County even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to the area by virtue of its designation and classification. See 61 FR 53174, 53175–53176 (October 10, 1996) and 62 FR 24826, 24830–32 (May 7, 1997).

In any event, as discussed previously, EPA has fully approved Virginia's RACT, I/M and Part D nonattainment NSR SIP revisions for the Stafford County, the only part of the Fredericksburg area inside the OTR. Also, as noted previously, Virginia's approved RACT SIP sets the major source applicability thresholds for both VOC and NO_X at 25 tpy which are well below the 50 and 100 tpy applicability thresholds required in the OTR for VOC sources and NO_X sources, respectively.

EPA also notes that for the Stafford County portion of the Fredericksburg area EPA has fully approved under section 110(k) Virginia's nonattainment NSR program that met the requirements for a severe 1-hour ozone nonattainment area. See 65 FR 21315 (April 21, 2000) as amended by 64 FR 51047 (September 21, 1999) (recodification) and by 69 FR 32928, June 14, 2004. Consequently Stafford County's approved NSR program satisfies the NSR requirements applicable in the OTR. Thus, EPA proposes to find that the Fredericksburg area has satisfied all 8-hour ozone standard requirements applicable for purposes of section 107(d)(3)(E) under Part D of the CAA.

4. The Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable Virginia SIP for the area under section 110(k) of the Clean Air Act. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni Memo, p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F. 3d 984, 989–90 (6th Cir. 1998), *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25425 (May 12, 2003) and citations therein. Virginia has adopted and submitted and EPA has fully approved at various times provisions addressing the various 1-hour ozone standard SIP elements applicable for purposes of redesignation, in the Stafford portion of the Fredericksburg area. As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that no 8-hour Part D requirements applicable for purposes of redesignation have yet become due, and therefore they need not be approved into the SIP prior to redesignation.

C. The Air Quality Improvement in the Fredericksburg Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

EPA believes that the Commonwealth has demonstrated that the observed air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures. EPA approved Virginia's SIP control strategy for the Fredericksburg area, including enforceable rules and the emissions reductions achieved as a result of those rules. Emissions reductions attributable to these rules are shown in Table 3.

TABLE 3.—TOTAL VOC AND NO_X EMISSIONS FOR 2002 AND 2004 (TPD)

Year	Point	Area*	Nonroad	Mobile	Total
Volatile Organic Compounds (VOC)					
Year 2002	0.563	13.487	3.545	13.054	30.649
Year 2004	0.602	14.070	3.304	11.298	29.274
Diff. (02–04)	0.039	0.583	−0.241	−1.756	−1.375
Nitrogen Oxides (NO_X)					
Year 2002	0.178	3.258	3.717	22.498	29.651
Year 2004	0.179	3.465	3.601	19.742	26.987
Diff. (02–04)	0.001	0.207	−0.116	−2.756	−2.664

* Area source category includes emissions from motor vehicle refueling.

Between 2002 and 2004, VOC emissions were reduced by 1.4 tpd, and NO_X emissions were reduced by 2.7 tpd, due to the following permanent and enforceable measures implemented or in the process of being implemented in the Fredericksburg area:

Programs Currently in Effect

(a) National Low Emission Vehicle (NLEV);

(b) Open burning restrictions for Stafford County only;

(c) CTG RACT requirements for Stafford County only;

(d) Non-CTG RACT requirements for Stafford County only;

(e) Stage I and Stage II vapor recovery requirements for Stafford County only;

(f) Reformulated gasoline (RFG) requirements for Stafford County only;

(g) Area source VOC regulations concerning portable fuel containers; mobile vehicle refinishing; architectural and industrial maintenance coatings; solvent cleaning; and, consumer products for Stafford County only;

(h) Motor vehicle fleet turnover with new vehicles meeting the Tier 2 standards; and,

(i) Low-sulfur gasoline.

Virginia has demonstrated that the implementation of permanent enforceable emissions controls have reduced local VOC and NO_X emissions. Nearly all of these reductions are attributable to mobile source emission controls such as NLEV and Tier I programs. Additionally, Virginia has indicated in its submittal that the NO_X SIP Call took effect in 2004. While there are no subject sources currently located in the City of Fredericksburg, Stafford County or Spotsylvania County, Virginia expects to indirectly benefit in terms of

improved air quality due to this program. EPA believes that permanent and enforceable emissions reductions are the cause of the long-term improvement in ozone levels and are the cause of the area achieving attainment of the 8-hour ozone standard.

D. The Fredericksburg Area Has a Fully Approvable Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate the Fredericksburg area to attainment status, Virginia submitted a SIP revision to provide for maintenance of the 8-hour ozone NAAQS in the area for at least 10 years after redesignation.

1. What Is Required in a Maintenance Plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, the Commonwealth must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

(a) An attainment emissions inventory;

(b) A maintenance demonstration;

(c) A monitoring network;

(d) Verification of continued attainment; and

(e) A contingency plan.

2. Analysis of the Fredericksburg Area Maintenance Plan

(a) Attainment Inventory—An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. The VADEQ determined that the appropriate attainment inventory year is 2004. That year establishes a reasonable year within the 3-year block of 2002–2004 as a baseline and accounts for reductions attributable to implementation of the CAA requirements to date.

The VADEQ prepared comprehensive VOC and NO_X emissions inventories for the City of Fredericksburg, Spotsylvania County, and Stafford County, including point (sources with emissions over 10 tons per year or greater), area, mobile on-road, and mobile non-road sources for a base year of 2002. All inventories are based on actual emissions for a ''typical summer day'' and consist of a list of sources and their associated emissions. An attainment year of 2004 was used for the Fredericksburg area since it is a reasonable year within the 3-year block of 2002–2004 and accounts for reductions attributable to implementation of the CAA requirements to date. Because an actual emissions inventory for point sources has not yet been completed for 2004, the actual 2002 emissions inventory was used as a starting point and then projected to 2004 using Economic Growth Analysis System (EGAS 5.0).

To develop the NO_X and VOC base year emissions inventories, VADEQ used the following approaches and sources of data:

(i) *Point source emissions* are recorded and maintained electronically in the VADEQ's Comprehensive Environmental Data System (CEDS). The emissions for these sources are updated annually by collecting year-specific emissions and/or activity level information. While developing the emissions inventory, a cutoff emissions level of 10 tpy of ozone precursor pollutants was used to determine whether a source was included in these inventories. Smaller emissions sources were assumed to be included in the area source emissions inventories.

(ii) *Area source emissions* were developed using the 2002 periodic year stationary area source emissions inventories along with growth factors. Before attempting to calculate the growth factors, VADEQ determined the appropriate annual growth rate representative of each industry or indicator. ''Growth Rate'' refers to the annual percentage of growth that occurs in a category per year. The area source growth rate estimates also involve the use of current local source data, including area populations and employment data by source type.

(iii) The process of estimating *on-road mobile source emissions* consists of two components: Vehicular-related activity (*i.e.*, VMT) and an average rate of pollutant produced as a result of a particular level of activity. A pollutant emission rate associated with a particular level of activity emissions were estimated using MOBILE6.2 emissions factors. The VADEQ has provided detailed data summaries to document the calculations of mobile on-road VOC and NO_X emissions for 2002, as well as for the projection years of 2004, 2009, and 2015 (shown in tables 4 and 5 below).

(iv) *Mobile non-road emissions* were calculated using the NONROAD model that incorporates EPA's recent regulations affecting these engine types (recreational vehicles, lawn and garden equipment, and outdoor power equipment) well into the future. The VADEQ used the NONROAD model to calculate emissions for all nonroad engine types except for aircraft, locomotives, and commercial marine vessels which were inventoried separately. The VADEQ's nonroad inputs are based on the required RFG and the Stage II vapor recovery systems in Stafford County, while the City of Fredericksburg and Spotsylvania County's non-road inputs are based on southern-grade conventional gasoline.

The 2004 attainment year VOC and NO_X emissions for the Fredericksburg area are summarized along with the 2009 and 2015 projected emissions for this area in Tables 4 and 5 below, which covers the demonstration of maintenance for this area. EPA has concluded that the Commonwealth has adequately derived and documented the 2004 attainment year VOC and NO_X emissions for this area.

(b) Maintenance Demonstration—On May 4, 2005, the VADEQ submitted a SIP revision to supplement its May 2, 2005 redesignation request. The submittal by VADEQ consists of the maintenance plan as required by section 175A of the CAA. This plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that current and future emissions of VOC and NO_X remain at or below the attainment year 2004 emissions levels throughout the Fredericksburg area through the year 2015. A maintenance demonstration need not be based on modeling. See *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001); *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25430–32 (May 12, 2003).

Tables 4 and 5 specify the VOC and NO_X emissions for the Fredericksburg area for 2004, 2009, and 2015. The VADEQ chose 2009 as an interim year in the 10-year maintenance demonstration period to demonstrate that the VOC and NO_X emissions are not projected to increase above the 2004 attainment level during the time of the 10-year maintenance period.

TABLE 4.—TOTAL VOC EMISSIONS FOR 2004–2015 (TPD)

Source category	2004 VOC emissions	2009 VOC emissions	2015 VOC emissions
Mobile [1]	11.298	8.346	7.334
Nonroad	3.304	2.555	2.231
Area [2]	14.070	13.161	15.303
Point	0.602	0.692	0.782
Total ..	29.274	24.754	25.650

[1] Includes transportation conformity provisions.
[2] Includes vehicle refueling emissions and the benefits of selected local controls (Stage I, CTG RACT, and open burning).

TABLE 5.—TOTAL NO_X EMISSIONS 2004–2015 (TPD)

Source category	2004 NO_X emissions	2009 NO_X emissions	2015 NO_X emissions
Mobile [1]	19.742	12.062	7.576
Nonroad	3.601	3.080	2.195
Area [2]	3.465	3.926	4.742
Point	0.179	0.180	0.182
Total ..	26.987	20.248	14.695

[1] Includes transportation conformity provisions.
[2] Includes selected local controls (open burning).

Additionally, the following mobile programs are either effective or due to become effective and will further contribute to the maintenance demonstration of the 8-hour ozone NAAQS:

• Heavy duty diesel on-road (2004/2007) and low-sulfur on-road (2006); (January 18, 2001, 66 FR 5002); and

• Non-road emissions standards (2008) and off-road diesel fuel (2007/2010); (June 29, 2004, 69 FR 39858).

Lastly, to further improve air quality and to ensure continued attainment by maintaining emissions in the area at or below 2004 levels, the Commonwealth of Virginia has initiated rulemaking to implement the following programs:

• Stage I Vapor Recovery requirements in Fredericksburg and Spotsylvania;

• Open burning restriction requirements in Fredericksburg and Spotsylvania; and

• VOC RACT requirements for CTG—subject sources in Fredericksburg and Spotsylvania.

In addition to the above permanent and enforceable measures, CAIR should have positive impacts on the Commonwealth's air quality by the years 2009 and 2015.

Based on the comparison of the projected emissions and the attainment year emissions along with the additional measures, EPA concludes that VADEQ has successfully demonstrated that the 8-hour ozone standard should be maintained in the Fredericksburg area.

(c) Monitoring Network—There is currently one monitor measuring ozone in the Fredericksburg area. VADEQ will continue to operate its current air quality monitor in accordance with 40 CFR part 58. Should measured mobile source parameters change significantly over time, the Commonwealth will perform a saturation monitoring study to determine the need for, and location of, additional permanent monitors.

(d) Verification of Continued Attainment—The Commonwealth of Virginia has the legal authority to implement and enforce specified measures necessary to attain and maintain the NAAQS. Key regulatory requirements that VADEQ will implement and retain to maintain attainment include expanding VOC RACT for CTG sources, Stage I Vapor Recovery, and open burning restrictions to the City of Fredericksburg and Spotsylvania County. The VADEQ will track the progress of the maintenance demonstration by periodically updating the emissions inventory. This tracking will consist of annual and periodic evaluations. The annual evaluation will consist of checks on key emissions trend indicators such as the annual emissions update of stationary sources, the Highway Performance Monitoring System (HPMS) VMT data reported to the Federal Highway Administration, and other growth indicators. These indicators will be compared to the growth assumptions used in the plan to determine if the predicted versus the observed growth remains relatively constant. The Commonwealth will also develop and submit comprehensive tracking inventories to EPA every three years during the maintenance plan period. For purpose of performing this tracking function for point sources, the Commonwealth will retain the annual emission statement requirements for the maintenance area (9 VAC 5–20–160).

(e) The Maintenance Plan's Contingency Measures—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the Act requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that the Commonwealth will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would ''trigger'' the adoption and implementation of a contingency measure(s), the contingency measures that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

The ability of the Fredericksburg area to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO_X emissions in the area remaining at or below 2004 levels. The Commonwealth's maintenance plan projects VOC and NO_X emissions to decrease and stay below 2004 levels through the year 2015. However, if emissions do not decrease as expected, or if emissions increase, the area may experience 8-hour ozone violations.

The Commonwealth's maintenance plan lays out three situations where the need to adopt and implement a contingency measure to further reduce emissions would be triggered. Those situations are as follows:

(i) *An actual increase of the VOC or NO_X emissions above the 2004 attainment levels is identified or predicted through the development of the comprehensive periodic tracking inventories*—The maintenance plan states that the VADEQ will monitor the observed growth rates for VMT, population, and point source VOC and NO_X emissions on a yearly basis which will serve as an early warning indicator of the potential for a violation. The plan also states that comprehensive tracking inventories will also be developed every 3 years using current EPA-approved methods to estimate emissions, concentrating on areas identified in the less rigorous yearly evaluations as being potential problems. If the 2004 attainment level emissions for VOC or NO_X is exceeded or is predicted to be exceeded, the following measures will be implemented:

• Preparation of a complete VOC and NO_X emission inventory; and

• The expanded implementation of one or more of the following of Virginia's area source VOC regulations throughout the entire Fredericksburg area (these regulations are already required in Stafford County): Emission Standards for Portable Fuel Container Spillage (9 VAC 5 Chapter 40, Article 42); Emission Standards for Mobile Equipment Repair and Refinishing Operations (9 VAC 5 Chapter 40, Article 48); Emission Standards for Architectural and Industrial Maintenance Coatings (9 VAC 5 Chapter 40, Article 49); and Emission Standards for Consumer Products (9 VAC 5 Chapter 40, Article 50).

(ii) *The Stafford County monitor indicates two or more ozone exceedances (any fourth highest 8-hour*

average above 0.08 ppm) in consecutive years—According to the maintenance plan, if two or more ozone exceedances (any fourth highest 8-hour average above 0.08 ppm) are recorded in consecutive years, the following measure(s) will be implemented:

• The expanded implementation of one or more of the following of Virginia's area source VOC regulations throughout the entire Fredericksburg area (these regulations are already required in Stafford County): Emission Standards for Portable Fuel Container Spillage (9 VAC 5 Chapter 40, Article 42); Emission Standards for Mobile Equipment Repair and Refinishing Operations (9 VAC 5 Chapter 40, Article 48); Emission Standards for Architectural and Industrial Maintenance Coatings (9 VAC 5 Chapter 40, Article 49); and Emission Standards for Consumer Products (9 VAC 5 Chapter 40, Article 50).

(iii) *A violation (any 3 year average of each annual fourth highest 8-hour average) of the 8-hour ozone NAAQS of 0.08 ppm occurs*—The maintenance plan states that if a violation (any 3 year average of each annual fourth highest 8-hour average) of the 8-hour ozone NAAQS of 0.08 ppm occurs, the contingency measures will be implemented as follows:

• If there remain any VOC regulations [Emissions Standards for Portable Fuel Container Spillage (9 VAC 5 Chapter 40, Article 42); Emissions Standards for Mobile Equipment Repair and Refinishing Operations (9 VAC 5 Chapter 40, Article 48); Emission Standards for Architectural and Industrial Maintenance Coatings (9 VAC 5 Chapter 40, Article 49); and Emission Standards for Consumer Products (9 VAC 5 Chapter 40, Article 50)] not yet implemented following an earlier maintenance plan trigger event, expand the implementation of those remaining measures throughout the entire Fredericksburg area (these regulations are already required in Stafford County);

• If a violation of the ozone standard occurs in an ozone season subsequent to implementation of all of the Commonwealth's VOC area source regulations, then implement NO_X RACT and VOC RACT for non-CTG sources emitting above 100 tpy located in Spotsylvania County and the City of Fredericksburg. Source categories that may be affected by this requirement include equipment manufacturing (NO_X RACT and VOC RACT for non-CTG RACT has already been implemented in Stafford County, due to prior 1-hour ozone NAAQS requirements).

The following schedule for adoption, implementation and compliance applies to the contingency measures concerning non-CTG RACT requirements. It would also apply to the imposition of the area source VOC regulations if those regulations had not already been implemented due to other triggers or provisions of the maintenance plan.

• Notification received from EPA that a contingency measure must be implemented, or three months after a recorded violation;

• Applicable regulation to be adopted 6 months after this date;

• Applicable regulation to be implemented 6 months after adoption [3];

• Compliance with regulation to be achieved within 12 months of adoption.

(f) An Additional Provision of the Maintenance Plan—The Commonwealth's maintenance plan for the Fredericksburg area has an additional provision. That provision states that regardless of the number of exceedances or violations noted, the regulations controlling VOC emissions from area sources: Article 42 Emission Standards for Portable Fuel Container Spillage (9 VAC 5 Chapter 40, Article 48); Emission Standards for Mobile Equipment Repair and Refinishing Operations (9 VAC 5 Chapter 40, Article 49); Emission Standards for Architectural and Industrial Maintenance Coatings (9 VAC 5 Chapter 40, Article 50); and Emission Standards for Consumer Products (9 VAC 5 Chapter 40) will be expanded to the City of Fredericksburg and Spotsylvania County such that these regulations will take effect in 2008, or as expeditiously as possible thereafter in order to provide additional air quality benefits.

The maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. EPA believes that the maintenance plan SIP revision submitted by Virginia for the Fredericksburg area meets the requirements of section 175A of the Act.

[3] In the event of implementation of the RACT contingency measure, Virginia would amend its current RACT regulations to apply them to non-CTG sources in Spotsylvania County and the City of Fredericksburg within 6 months after (a) notification received from EPA that the contingency measure must be implemented, or (b) three months after a recorded violation. The newly subject non-CTG RACT sources would need to develop source-specific RACT plans and comply with their plans no later than 12 months from the date of Virginia's adoption of the amended regulations.

VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Maintenance Plan for the Fredericksburg Area Adequate and Approvable?

A. What Are the Motor Vehicle Emissions Budgets?

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (i.e. Reasonable Further Progress SIPs and attainment demonstration SIPs) and maintenance plans identify and establish MVEBs for certain criteria pollutants and/or their precursors to address pollution from on-road mobile sources. In the maintenance plan the MVEBs are termed ''on-road mobile source emissions budgets''. Pursuant to 40 CFR part 93 and 51.112, MVEBs must be established in an ozone maintenance plan. An MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. An MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish and revise the MVEBs in control strategy SIPs and maintenance plans.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of or reasonable progress towards the national ambient air quality standards. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a state implementation plan.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB budget contained therein ''adequate'' for use in determining transportation conformity. After EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by state and Federal agencies in determining whether proposed transportation projects

''conform'' to the state implementation plan as required by section 176(c) of the CAA. EPA's substantive criteria for determining ''adequacy'' of an MVEB are set out in 40 CFR 93.118(e)(4).

EPA's process for determining ''adequacy'' consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision''. This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The MVEBs for the Fredericksburg area are listed in Table 1 of this document for the 2004, 2009, and 2015 years and are the projected emissions for the on-road mobile sources plus any portion of the safety margin allocated to the MVEBs. These emission budgets, when approved by EPA, must be used for transportation conformity determinations.

B. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The following example is for the 2015 safety margin: The Fredericksburg area first attained the 8-hour ozone NAAQS during the 2002 to 2004 time period. The Commonwealth used 2004 as the year to determine attainment levels of emissions for the Fredericksburg area. The total emissions from point, area, non road and mobile sources in 2004 equaled 29.274 tpd of VOC and 26.987 tpd of NO_X. The VADEQ projected emissions out to the year 2015 and projected a total of 25.650 tpd of VOC and 14.695 tpd of NO_X from all sources in the Fredericksburg area. The safety margin for the Fredericksburg area for 2015 would be the difference between these amounts, or 3.624 tpd of VOC and 12.292 tpd of NO_X. The emissions up to the level of the attainment year including the safety margins are projected to maintain the area's air quality consistent with the 8-hour ozone NAAQS. The safety margin is the extra emissions reduction below the attainment levels that can be allocated for emissions by various sources as long as the total emission levels are maintained at or below the attainment levels. The following table shows the safety margins for the 2009 and 2015 years.

TABLE 6.—2009 AND 2015 SAFETY MARGINS FOR THE FREDERICKSBURG AREA

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2004 Attainment	29.274	26.987
2009 Interim	24.754	20.248
2009 Safety Margin	4.520	6.739
2004 Attainment	29.274	26.987
2015 Final	25.650	14.695
2015 Safety Margin	3.624	12.292

The VADEQ allocated 0.25 tpd of the safety margin to both the 2009 interim VOC projected on-road mobile source emissions projection and the 2009 interim NO_X projected on-road mobile source emissions projection to arrive at the 2009 MVEBs. For the 2015 MVEBs the VADEQ allocated 0.25 tpd NO_X and 1.6 tpd VOC from the 2015 safety margins to arrive at the 2015 MVEBs. Once allocated to the mobile source budgets these portions of the safety margins are no longer available, and may no longer be allocated to any other source category.

TABLE 7.—2009 AND 2015 FINAL MVEBS FOR THE FREDERICKSBURG AREA

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2009 projected on-road mobile source projected emissions	8.096	12.812
2009 Safety Margin Allocated to MVEBs	0.250	0.250
2009 MVEBs	8.346	13.062
2015 projected on-road mobile source projected emissions	5.734	7.326
2015 Safety Margin Allocated to MVEBs	1.600	0.250
2015 MVEBs	7.334	7.576

C. Why Are the MVEBs Approvable?

The 2004, 2009 and 2015 MVEBs for the Fredericksburg area are approvable because the motor vehicle emissions budgets for NO_X and VOC including the allocated safety margins continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

D. What Is the Adequacy and Approval Process for the MVEBs in the Fredericksburg Area Maintenance Plan?

The MVEBs for the Fredericksburg maintenance plan are being posted to EPA's conformity Web site concurrent with this proposal. The public comment period will end at the same time as the public comment period for this proposed rule. In this case, EPA is concurrently processing the action on the maintenance plan and the adequacy process for the MVEBs contained therein. In this proposed rule, EPA is proposing to find the MVEBs adequate

and also proposing to approve the MVEBs as part of the maintenance plan. The MVEBs cannot be used for transportation conformity until the maintenance plan update and associated MVEBs are approved in a final **Federal Register** notice, or EPA otherwise finds the budget adequate in a separate action following the comment period.

If EPA receives adverse written comments with respect to the proposed approval of the Fredericksburg MVEBs, or any other aspect of our proposed approval of this updated maintenance plan, we will respond to the comments on the MVEBs in our final action or proceed with the adequacy process as a separate action. Our action on the Fredericksburg MVEBs will also be announced on EPA's conformity Web site: *http://www.epa.gov/oms/traq,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

VIII. 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.

IX. Proposed Actions

EPA is proposing to determine that the Frdericksburg area has attainted the 8-hour ozone NAAQS. The EPA is also proposing to approve the Commonwealth of Virginia's May 2, 2005 request for the Fredericksburg area to attainment of the 8-hour NAAQS for ozone because the requirements for approval have been satisfied. EPA has evaluated Virginia's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the area has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of the Fredericksburg area from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan for this area, submitted on May 4, 2005, as a revision to the Virginia SIP. EPA is proposing to approve the maintenance plan for the area because it meets the requirements of section 175A. EPA is also proposing to approve the MVEBs submitted by Virginia for the area in conjunction with its redesignation request. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

X. 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 action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. 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 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), nor will it 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), because it merely proposes to affect the status of a geographical area, does not impose any new requirements on sources, or allow the state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (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. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This rule proposing to approve the redesignation of the Fredericksburg area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, and the MVEBs identified in the maintenance plan, 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

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

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

Dated: October 27, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–21835 Filed 11–1–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2693; MB Docket No. 05–282; RM–11229]

Radio Broadcasting Services; Aragon, GA; Chattanooga and Lynchburg, TN; and Rockmart, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Audio Division requests comment on a petition filed by Woman's World Broadcasting, Inc., pursuant to section 1.420(i) of the Commission's rules, 47 CFR 1.420(i). Petitioner proposes to change the community of license for Station WTSH–FM from Rockmart to Aragon, Georgia, to upgrade the authorization for Station WTSH–FM to Class C1, and to change the FM Table of Allotments by deleting Channel 296C2 at Rockmart, Georgia, and by adding Channel 296C1 at Aragon, Georgia, as the community's first local aural broadcast service. The proposed coordinates for Channel 296C1 at Aragon, Georgia, are 34–22–02 NL and 84–58–33 WL. The allotment will require a site restriction of 36.4 km (22.6 miles) north of Aragon. In order to accommodate the allotment of Channel 296C1 at Aragon, the petitioner further requests the substitution of Channel 230A for Channel 293A at Lynchburg, Tennessee. The proposed reference coordinates for Channel 230A at Lynchburg, Tennessee, are 35–21–58 NL and 86–17–18 WL, with a site restriction of 12.1 km (7.5 miles) northeast of Lynchburg.

DATES: Comments must be filed on or before December 5, 2005, and reply comments on or before December 20, 2005.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the petitioner as follows: Gary S. Smithwick, Esq., Smithwick & Belendiuk, P.C., 5028 Wisconsin Avenue, NW., Suite 301, Washington, DC 20016.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–282, adopted October 12, 2005, and released October 14, 2005. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Rockmart, Channel 296C2, and by adding Aragon, Channel 296C1.

3. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 293C and adding Channel 293C0 at Chattanooga and by removing Channel 296A and adding Channel 230A at Lynchburg.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–21558 Filed 11–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2718; MB Docket No. 05–292; RM–11281]

Radio Broadcasting Services; Churchville and Keswick, VA and Marlinton, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Force 5 Communications, LLC) (Petitioner''), licensee of Station WBOP(FM) (''WBOP''), Channel 292B1, Churchville, Virginia. Petitioner requests that the Commission allot Channel 292A to Marlinton, West Virginia. It also proposes to reallot Channel 292B1 from Churchville to Keswick, Virginia, substitute Channel 291A for Channel 292B1 at Keswick, and modify Station WBOP's license accordingly. The coordinates for Channel 292A at Marlinton, West Virginia are 38–13–24 NL and 80–05–41 WL. The coordinates for Channel 291A at Keswick, Virginia, are 38–01–48 NL and 78–22–55 WL, with a site restriction of 2.1 kilometers (1.3 miles) northwest of Keswick.

DATES: Comments must be filed on or before December 8, 2005, and reply comments on or before December 23, 2005.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve Petitioner's counsel, as follows: David G. O'Neil, Esq., Rini Coran, P.C.; 1501 M Street, NW., Suite 1150; Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–292, adopted October 12, 2005 and released October 17, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (C)(4).

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by removing Churchville, Channel 292B1 and by adding Keswick, Channel 291A.

3. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Marlinton, Channel 292A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–21557 Filed 11–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2694; MM Docket No. 01–188, RM–10203]

Radio Broadcasting Services; Evant, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Audio Division, at the request of Charles Crawford, the proponent of a petition for rule making to allot Channel 243A at Evant, Texas, 66 FR 44588 (August 24, 2001), dismisses the petition for rule making and terminates the proceeding.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 01–188, adopted October 12, 2005, and released October 14, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–257, Washington, DC 20554. The complete text of this decision also

may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* The *Report and Order* is not subject to the Congressional Review Act, and therefore the Commission will not send a copy of it in a report to be sent to Congress and the Government Accountability Office, *see* U.S.C. 801(a)(1)(A).

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–21554 Filed 11–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2691, MB Docket No. 05–122, RM–11198]

Radio Broadcasting Services: Columbus and Monona, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: At Media Division dismisses the Petition for Rule Making filed by Good Karma Broadcasting, LLC, proposing the reallotment of Channel 263A from Columbus to Monona, Wisconsin, and the modification of Station WTLX(FM)'s license accordingly. *See* 709 FR 17046, April 4, 2005. It is not conducive to the efficient processing of petitions for rule making for the Commission to accept an ungranted construction permit application as a ''backfill'' to replace the prospective loss of a sole local service of a community.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 05–122, adopted October 12, 2005, and released October 14, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the proposed rule was dismissed.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–21553 Filed 11–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2717; MB Docket No.05–291, RM–11270]

Radio Broadcasting Services; Addis, Eunice and Franklin, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Audio Division requests comment on a petition filed by Radio and Investments, Inc., pursuant to section 1.420(i) of the Commission's rules, 47 CFR 1.420(i). Petitioner proposes to change the community of license for Station KDDK(FM) from Franklin to Addis, Louisiana, and to change the FM Table of Allotments by deleting Channel 288A at Franklin, Louisiana, and by adding Channel 288A at Addis, Louisiana, as the community's first local aural broadcast service. The proposed coordinates for Channel 288A at Addis, Louisiana, are 30–19–03 NL and 91–17–05 WL. The allotment will require a site restriction of 4.4 km (2.7 miles) southwest of Addis. In order to accommodate the allotment of Channel 288A at Addis, the petitioner further requests a consensual site change for Station KDDK(FM), Channel 288A, Eunice, Louisiana. The proposed reference coordinates for Channel 288A at Eunice, Louisiana, are 30–23–25 NL and 92–29–00 WL, with a site restriction of 12.9 km (8 miles) southwest of Eunice.

DATES: Comments must be filed on or before December 8, 2005, and reply comments on or before December 23, 2005.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the petitioner as follows: Lee J. Peltzman, Esq., Shainis & Peltzman, Chartered, 1850 M Street, NW., Suite 240, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–291; adopted October 12, 2005, and released October 17, 2005. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 288A at Franklin, and by adding Addis, Channel 288A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–21551 Filed 11–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2699; MB Docket No. 04–350; RM–10815]

Radio Broadcasting Services; Oroville, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a petition filed by Linda A. Davidson, requesting the allotment of Channel 272A at Oroville, California, as its second local service. *See* 69 FR 55547, published September 15, 2004. This document also dismisses the counterproposal filed by Deer Creek Broadcasting, LLC, proposing the allotment of Channel 272A at Quincy, California, as its sixth local service.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MB Docket No. 04–350, adopted October 12, 2005, and released October 14, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the proposed rule was dismissed.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–21552 Filed 11–1–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 051018271–5271–01; I.D. 101405C]

RIN 0648–AT84

Endangered and Threatened Species; Revision of Critical Habitat for the Northern Right Whale in the Pacific Ocean

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule; request for comment.

SUMMARY: National Marine Fisheries Service (NMFS) proposes to revise the current critical habitat for the northern right whale (*Eubalaena glacialis*) by designating additional areas within the North Pacific Ocean. Two specific areas proposed for designation, one in the Gulf of Alaska and another in the Bering Sea, comprise approximately 95,200 square kilometers (36,750 square miles) of marine habitat. Based upon the impacts analysis prepared for this action, NMFS has concluded that the benefits of exclusion of any area from the proposed critical habitat designation do not outweigh the benefits of inclusion. Consequently, no exclusions are proposed.

NMFS must consider the broad effects of this designation (revision). NMFS solicits comments from the public on all aspects of the proposal, including information on the economic, national security, and other relevant impacts of the proposed designation. NMFS may revise this proposal and solicit additional comments prior to final designation to address new information received during the comment period.

DATES: Comments on this proposed rule must be received by close of business on January 3, 2006. Requests for public hearings must be made in writing by December 19, 2005.

ADDRESSES: Send comments to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- E-mail: *0648–AT84–NPRWCH@noaa.gov*. Include in the subject line the following document identifier: Right Whale Critical Habitat PR. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.
- Mail: P. O Box 21668, Juneau, AK 99802
- Hand delivery to the Federal Building : 709 W. 9th Street, Juneau, Alaska.
- Fax: (907) 586–7012

The proposed rule, maps, stock assessments, and other materials relating to this proposal can be found on the NMFS Alaska Region website *http://www.fakr.noaa.gov/*.

FOR FURTHER INFORMATION CONTACT: Brad Smith, (907) 271–3023, or Marta Nammack, (301) 713–1401.

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973, as amended, [16 U.S.C. 1531] (ESA) imposes requirements upon Federal agencies regarding endangered or threatened species of fish, wildlife, or plants, and habitats of such species that have been designated as critical. The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) share responsibility for administering the ESA. Endangered or threatened species under the authority of NMFS are found in 50 CFR 222.102 and 224.101, and include the northern right whale.

Background

The northern right whale is a member of the family Balaenidae. It is found in the Pacific and Atlantic Oceans and is closely related to the right whales that inhabit the Southern Hemisphere. Right whales are large baleen whales which grow to lengths and weights exceeding 18 meters and 100 tons, respectively. They are filter feeders whose prey consists exclusively of zooplankton (notably copepods; see below). Right whales attain sexual maturity at an average age of 8 to 10 years, and females produce a single calf at intervals of 3 to 5 years (Kraus *et al.*, 2001). Their life expectancy is unclear, but they are known to reach 70 years in some cases (Hamilton *et al.*, 1998; Kenney, 2002).

Right whales are generally migratory, with at least a portion of the population moving between summer feeding grounds in temperate or high latitudes and winter calving areas in warmer waters (Kraus *et al.*, 1986; Clapham *et al.*, 2004). In the North Pacific, the feeding range is known to include the Gulf of Alaska, the Aleutian Islands, the Bering Sea and the Sea of Okhotsk. Although a general northward movement is evident in spring and summer, it is unclear whether the entire population undertakes a predictable seasonal migration, and the location of calving grounds remains completely unknown (Scarff, 1986; Scarff, 1991; Brownell *et al.*, 2001; Clapham *et al.*, 2004; Shelden *et al.*, 2005). Further details of occurrence and distribution are provided below.

In the North Pacific, whaling for right whales began in the Gulf of Alaska (known to whalers as the ''Northwest Ground'') in 1835 (Webb, 1988). Right whales were extensively hunted in the western North Pacific in the latter half of the 19th century, and by 1900 were scarce throughout their range. Right whales were protected worldwide in 1935 through a League of Nations agreement. However, because neither Japan nor the former USSR signed this agreement, both nations were theoretically free to continue right whaling until 1949, when the newly created International Whaling Commission endorsed this ban. Following this, a total of 23 northern right whales in the North Pacific were legally killed by Japan and the former USSR under Article VIII of the International Convention for the Regulation of Whaling (1946), which permits the taking of whales for scientific research purposes. However, it is now known that the USSR illegally caught many right whales in the North Pacific (Doroshenko, 2000; Brownell *et al.*, 2001). In the eastern North Pacific, 372 right whales were killed by the Soviets between 1963 and 1967; of these, 251 were taken in the Gulf of Alaska south of Kodiak, and 121 in the southeastern Bering Sea. These takes devastated a population that, while undoubtedly small, may have been undergoing a slow recovery (Brownell *et al.*, 2001).

As a result of this historic and recent hunting in both the Pacific and Atlantic Oceans, northern right whales today are among the most endangered of all whales worldwide. Northern right whales were listed in 1970 following passage of the Endangered Species Conservation Act (ESCA) of 1969, and automatically granted endangered status when the ESCA was repealed and replaced by the ESA. Right whales were also protected under the Marine Mammal Protection Act of 1972. NMFS issued a Recovery Plan for the northern right whale in 1991, covering animals in both the North Atlantic and North Pacific (NMFS, 1991). Brownell *et al.* (2001) noted that there was no evidence for exchange between the western and eastern Pacific, and that the two populations had different recovery histories; consequently, they argued that these stocks should be treated as separate for the purpose of management, a division which has been duly recognized by NMFS in Stock Assessment Reports (Angliss and Lodge, 2004).

In the western North Pacific (the Sea of Okhotsk and adjacent areas), current abundance is unknown but is probably in the low to mid-hundreds (Brownell *et al.*, 2001). There is no estimate of abundance for the eastern North Pacific (Bering Sea, Aleutian Islands and Gulf of Alaska), but sightings are rare; most biologists believe the current population is unlikely to exceed 100 individuals, and is probably much smaller. Prior to the illegal Soviet catches of the 1960s, an average of 25 whales was observed each year in the eastern North Pacific (Brownell *et al.*, 2001); in contrast, the total number of records in the 35 years from 1965 to 1999 was only 82, or 2.3 whales per annum.

Since 1996, NMFS and other surveys (directed or otherwise) have detected small numbers of right whales in the southeastern Bering Sea, including an aggregation estimated at 24 animals in the summer of 2004. Photo-identification and genetic data have identified 17 individuals from the Bering Sea, and the high inter-annual resighting rate further reinforces the idea that this population is small. Right whales have also been sighted in the northern Gulf of Alaska, including a sighting in August 2005. However, the overall number of right whales in the North Pacific using habitats other than the Bering Sea is not known.

The taxonomic status of right whales worldwide has recently been revised in light of genetic analysis (see Rosenbaum *et al.*, 2000; Gaines *et al.*, 2005). Applying a phylogenetic species concept to molecular data separates right whales into three distinct species: *Eubalaena glacialis* (North Atlantic), *E. japonica* (North Pacific) and *E. australis* (Southern Hemisphere). NMFS formally recognized this distinction for the purpose of management in a final rule published on April 10, 2003 (68 FR 17560), but subsequently determined that the issuance of this rule did not comply with the requirements of the ESA, and thus rescinded it (70 FR 1830; January 11, 2005) prior to beginning the process anew. At this time North Atlantic and North Pacific right whales are thus both officially considered to be ''northern right whales'' (*Eubalaena glacialis*) under the ESA.

Critical Habitat Designation History

Section 3 of the ESA defines critical habitat (CH) as ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed,.... 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 upon a determination by the Secretary that such areas are essential for the conservation of the species.'' Section 3 of the ESA (16 U.S.C. 1532(3)) also defines the terms ''conserve,'' ''conserving,'' and ''conservation'' to mean ''to use, and the use of, all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.''

Section 4 of the ESA requires that before designating CH, NMFS must consider economic impacts, impacts on national security and other relevant impacts of specifying any particular area as CH, and the Secretary may exclude any area from CH if the benefits of exclusion outweigh the benefits of inclusion, unless excluding an area from CH will result in the extinction of the species concerned. Once CH is designated, section 7(a)(2) of the ESA requires that each Federal agency shall, in consultation with and with the assistance of NMFS, ensure that any action authorized, funded or carried out by such agency is not likely to result in the destruction or adverse modification of CH.

Three areas in the North Atlantic Ocean were designated as CH for northern right whales in 1994; the Great South Channel, Cape Cod Bay, and waters of the Southeastern United States off Florida and Georgia. NMFS is currently analyzing the physical and biological features essential to the conservation of the northern right whale in the Atlantic Ocean, and has outlined steps it will take to propose any revisions to that designated CH that might be supported by new information and analysis (68 FR 51758; August 28, 2003).

Previous Federal Action and Related Litigation

In October 2000, NMFS was petitioned by the Center for Biological Diversity to revise the CH for the northern right whale by designating an additional area in the North Pacific Ocean. In February 2002, NMFS announced its decision that CH could not be designated in the North Pacific at that time because the essential biological requirements of the population were not sufficiently understood. However, in June 2005, a Federal judge found this reasoning invalid and ordered the agency to take action with respect to designating CH for the northern right whale in the North Pacific Ocean no later than October 28, 2005 (*Center for Biological Diversity* v. *Evans*, Civ. No. 04–04496, N.D. Cal. June 14, 2005). In compliance with that order, NMFS is proposing to revise the current CH for this species by designating areas within the Gulf of Alaska and Bering Sea as CH under the ESA. The range of the northern right whale extends to waters of the western North Pacific. These waters are outside the United States, and because CH is not to be designated within foreign countries or outside of U.S. jurisdiction [50 CFR 424.12(h)], NMFS has not considered designation of CH for that region.

Critical Habitat

Geographical Area Occupied by the Species

The ESA defines CH (in part) as areas within the geographical area occupied by the species at the time it was listed under the ESA. Because this geographical area has not been previously described for the northern right whale in the Pacific Ocean, it is necessary to establish this range when proposing to designate CH. The northern right whale was listed as endangered in 1973. Prior to the onset of commercial whaling in 1835, right whales were widely distributed across the North Pacific (Scarff, 1986; Clapham *et al.*, 2004; Shelden *et al.*, 2005). By 1973, the northern right whale in the Pacific Ocean had been severely reduced by commercial whaling. Sighting data from this remnant population are too sparse to identify the range of these animals in 1973. However, no reason exists to suspect that the right whales that remain alive today inhabit a substantially different range than right whales alive during the time of the Soviet catches; indeed, given the longevity of this species, it is likely that some of the individuals who survived that whaling episode remain extant.

Both the southeastern Bering Sea and the western Gulf of Alaska (shelf and slope waters south of Kodiak) have been the focus of many sightings (as well as the illegal Soviet catches) in recent decades. In general, the majority of northern right whale sightings (historically and in recent times) in the Northeast Pacific have occurred from about 40° N to 60° N latitude (lat.). There are historical records from north of 60° N lat., but these are rare and are likely to have been misidentified bowhead whales. Right whales have on rare occasions been recorded off California and Mexico, as well as off Hawaii. However, as noted by Brownell *et al.* (2001), there is no evidence that either Hawaii or the west coast of North America from Washington State to Baja California were ever important habitats for right whales. Given the amount of whaling effort as well as the human population density in these regions, it is highly unlikely that substantial concentrations of right whales would have passed unnoticed. Furthermore, no archaeological evidence exists from the U.S. west coast suggesting that right whales were the target of local native hunts. Consequently, the few records from this region are considered to represent vagrants. The geographical area occupied by the northern right whale at the time it was listed under the ESA extends over a broad area of the North Pacific Ocean as depicted in Figure 1.

BILLING CODE 6750–01–S

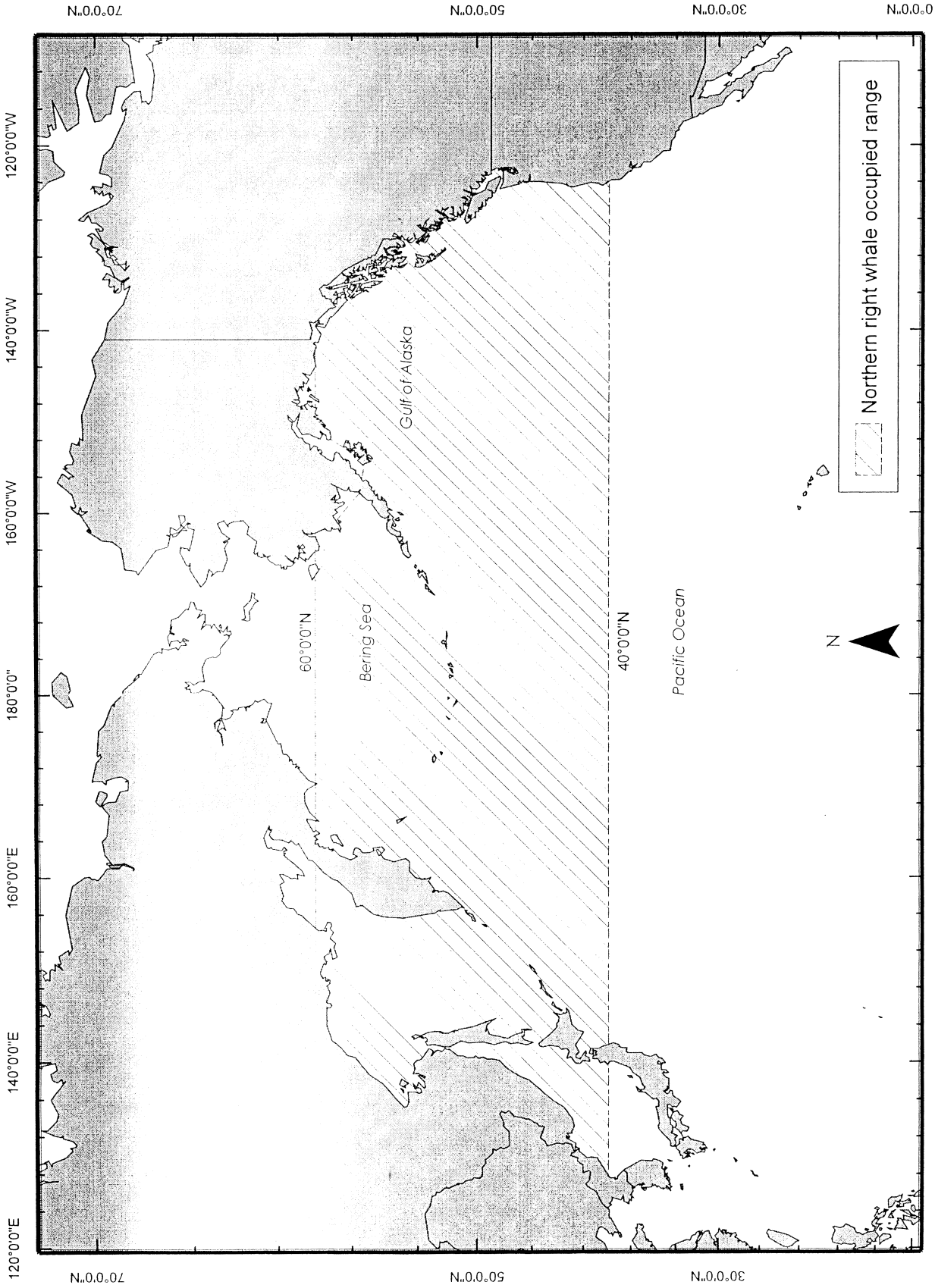

Figure 1. Occupied range of Northern right whales in the North Pacific at time of listing under the Endangered Species Act.

Unoccupied Areas

ESA section 3(5)(A)(ii) further defines CH to include ''specific areas outside the geographical area occupied'' if the areas are determined by the Secretary of Commerce (Secretary) to be ''essential for the conservation of the species.'' 50 CFR 424.12(e) specifies that NMFS ''shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.'' NMFS is not proposing to designate any areas not occupied at the time of listing because any such areas are presently unknown (if they exist), and the value of any such habitat in conserving this species cannot be determined. Future revisions to the CH of the northern right whale may consider new information which might lead to designation of areas outside the occupied area of these whales.

Physical or Biological Features Essential to the Conservation of the Species (Primary Constituent Elements)

In determining what areas are CH, 50 CFR 424.12(b) requires that NMFS consider those physical or biological features that are essential to the conservation of a given species and that may require special management considerations or protection, including 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 of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species. The regulations further direct us to ''focus on the principal biological or physical constituent elements . . . that are essential to the conservation of the species,'' and specify that the ''[K]nown primary constituent elements shall be listed with the critical habitat description.'' The regulations identify primary constituent elements (PCE) as including, but not limited to: ''roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types.'' An area must contain one or more PCEs to be eligible for designation as CH; an area lacking a PCE may not be designated in the hope it will acquire one or more PCEs in the future.

NMFS scientists considered PCEs for the northern right whale in the Pacific Ocean during a workshop held during July 2005. Unfortunately, many data gaps exist in our knowledge of the ecology and biology of these whales, and very little is known about the PCEs which might be necessary for their conservation. The life-requisites of these whales for such factors as temperatures, depths, and substrates are unknown, or may be highly variable. One certainty is the metabolic necessity of prey species to support feeding by right whales. Examination of harvested whales in the North Pacific and limited plankton tows near feeding right whales in recent years show that several species of large copepods and other zooplankton constitute the primary prey of the northern right whale in the North Pacific Ocean.

The PCEs for the northern right whale in the North Pacific Ocean are large copepods in areas where right whales are known or believed to feed. Specifically, these are: *Calanus marshallae*, *Neocalanus cristatus*, *N. plumchris*. and *Thysanoëssa raschii*, a copepod whose very large size, high lipid content and occurrence in the region likely makes it a preferred prey item for right whales (J. Napp, pers. comm.). A description of the proposed CH areas (below) establishes the presence of these PCEs within those areas proposed as CH. In addition to the physical presence of these PCEs within the proposed CH, it is likely that certain physical forcing mechanisms are present which act to concentrate these prey in densities which allow for efficient foraging by right whales. There may in fact be critical or triggering densities below which right whale feeding does not occur. Such densities are not presently described for the right whales in the North Pacific. The PCEs, essential for the conservation of the northern right whale in the North Pacific and these physical forcing or concentrating mechanisms contribute to the habitat value of the areas proposed for designation.

Special Management Considerations or Protection

An occupied area may be designated as CH if it contains physical and biological features that ''may require special management considerations or protection.'' 50 CFR 424.02(j) defines ''special management considerations or protection'' to mean ''any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species.'' NMFS considered whether the copepods and other zooplankton in feeding areas, which have been identified as the PCEs for the northern right whale in the North Pacific Ocean, may require special management considerations or protection.

Copepods can be affected by physical and chemical alterations within the water column both by natural processes such as global climate change or the Pacific Decadal Oscillation, as well as by pollution from various potential sources, including oil spills and discharges resulting from oil and gas drilling and production. The outer continental shelf (OCS) oil and gas exploration and development permits or authorizations already are routinely conditioned with operational restraints, mitigative measures, or technological changes to protect the marine environment from these impacts. While such management measures and protections are not necessarily designed to protect copepods or zooplankton in right whale feeding areas per se, they could be useful in protecting these PCEs for the conservation of northern right whales in the North Pacific Ocean.

NMFS specifically requests comment on the extent to which the designated PCEs may require special management considerations or protection.

Proposed Critical Habitat

The current abundance of northern right whales in the North Pacific Ocean is considered to be very low in relation to historical numbers or their carrying capacity (not determined). The existence of a persistent concentration of right whales found within the Southeastern Bering Sea since 1996 is somewhat extraordinary in that it may represent a substantial portion of the remaining population. These areas of concentration where right whales feed are characterized as containing the copepod PCEs described above. NMFS considers these feeding areas, supporting a significant assemblage of the remaining right whales in the North Pacific, to be critical in terms of right whale conservation. For the reasons given below, NMFS has based designation of CH on these areas, rather than where right whales have appeared sporadically or in transit. NMFS has been able to substantiate the assumption that these areas are right whale feeding areas by observations of feeding behavior, direct sampling of plankton near feeding right whales, or records of stomach contents of dead whales. These assumptions underlie the proposed CH areas shown in Figure 2 and described below. Two areas are proposed, as depicted in Figure 2: an area of the southeastern Bering Sea and an area south of Kodiak Island in the Gulf of Alaska.

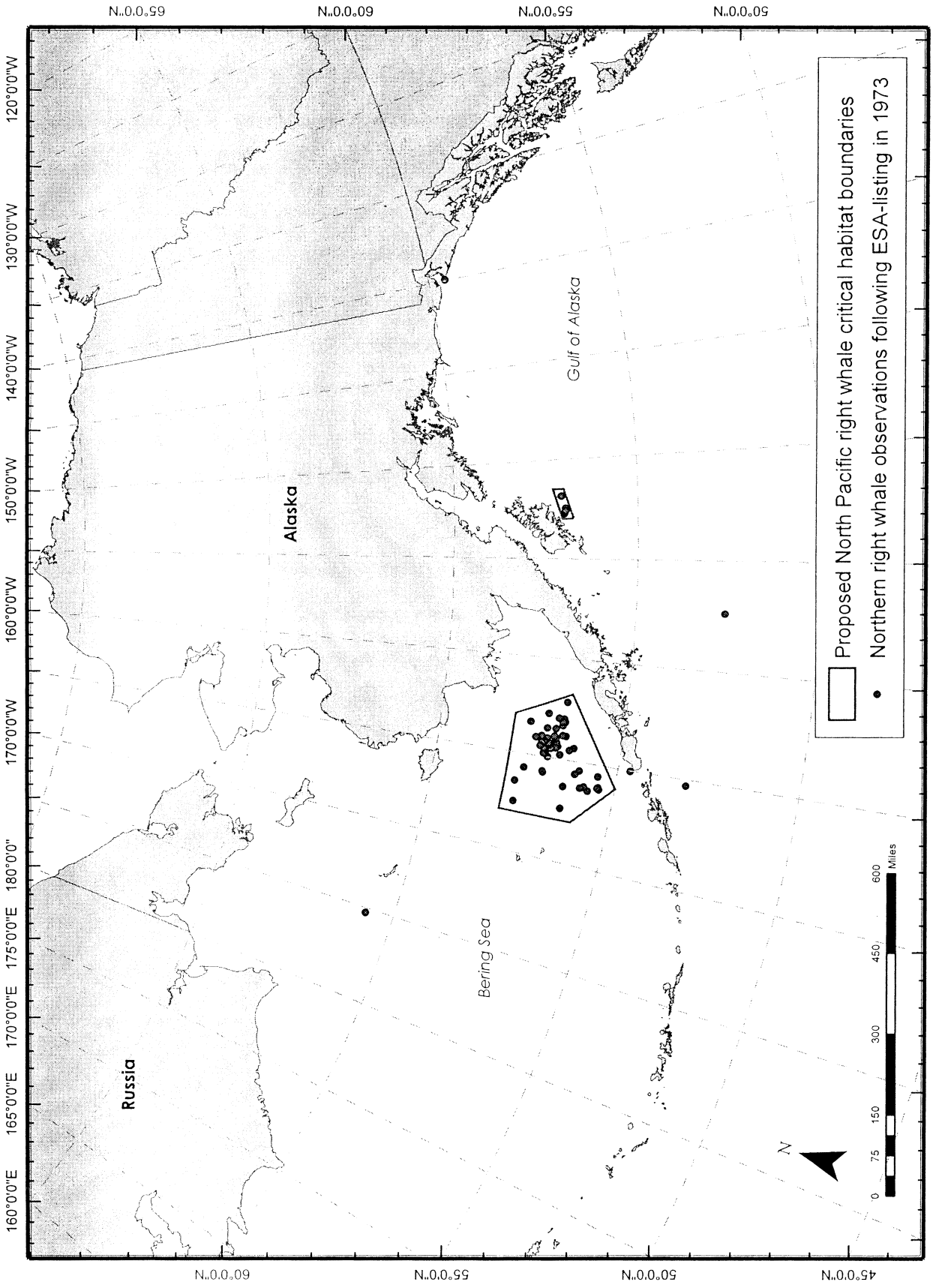

Figure 2. Proposed critical habitat for Northern right whales in the North Pacific.

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Shelden *et al.* (2005) reviewed prey and habitat characteristics of northern right whales in the North Pacific. They noted that habitat selection is often associated with features that influence abundance and availability of a predator's prey. Right whales in the North Pacific are known to prey upon a variety of zooplankton species. Availability of these zooplankton greatly influences the distribution of the small North Pacific population on their feeding grounds in the Southeastern Bering Sea (SEBS) and Gulf of Alaska (GOA). Right whales are known to feed on copepod patches of very high density, and these patches may typically be small and unpredictably distributed over space and time (Mayo and Marx, 1990).

Typical zooplankton sampling is too broad-scale in nature to detect patches of these densities, and directed studies employing fine-scale sampling cued by the presence of feeding right whales are the only means of doing this (Mayo and Marx, 1990). Accordingly, there may be no obvious correlation between the abundance and distribution of copepods (as measured by broad-scale oceanographic sampling) and the distribution of right whales (M. Baumgartner, in prep.) In light of this, NMFS must rely upon the whales themselves to indicate the location of important feeding areas in the North Pacific.

Aggregations of right whales in high latitudes can be used with high confidence as an indicator of the presence of suitable concentrations of prey, and thus of feeding behavior by the whales. Right whales feed daily during spring and summer, and studies in the North Atlantic have consistently found an association between concentrations of whales and feeding behavior, with dense copepod patches recorded by oceanographic sampling around such groups of whales (Mayo and Marx 1990, Baumgartner *et al.* 2003, 2003b). In the North Atlantic, an analysis of sighting data by NMFS indicated that a density of 4 or more right whales per 100 nm^2 was a reliable indicator of a persistent feeding aggregation (Clapham and Pace 2001), and this has been used for Dynamic Area Management fisheries closures to reduce the risk of right whales becoming entangled in fishing gear. While this metric is a reliable indicator of the presence of persistent feeding aggregations in the North Atlantic, it is not necessarily the only metric suitable for application in the North Pacific; the much smaller population of right whales in the eastern North Pacific Ocean typically results in sightings of single animals or pairs. Unlike with larger groups, such small numbers sometimes indicate transient passage through an area and thus cannot be unequivocally linked with feeding behavior. However, while sporadic sightings of right whales in such small numbers generally would not be considered a reliable indication of a feeding area, consistent sightings of right whales - even of single individuals and pairs - in a specific area in spring and summer over a long period of time is sufficient indication that the area is a feeding area containing suitable concentrations of copepods.

Therefore, in the absence of data which describe the densities, as well as presence, of the PCEs themselves, the distribution of right whales is used here as a proxy for the existence of suitably dense copepod patches and thus to identify the areas proposed herein for designation as CH. NMFS has used sighting records since the time of listing to make this determination because these records are more recent and are taken to be a more reliable indicator of current distribution than historical sightings, especially given that most of the latter relate to animals that were removed from the population by whaling.

Southeastern Bering Sea

NMFS proposes to designate CH in the Bering Sea (Figure 2) to be described as an area delineated by a series of straight lines connecting the following coordinates in the order listed:58°00′ N/ 168°00′ W; 58°00′ N/163°00′ W; 56°30′ N/161°45′ W; 55°00′ N/166°00′ W; 56°00′ N/168°00′ W and returning to 58°00′ N/168°00′ W. The area described by these boundaries lies completely within the waters of the United States and its Exclusive Economic Zone, outside of waters of the State of Alaska. State waters extend seaward for 3 nautical miles; very few sightings occurred within this area. Right whale encounters occurring after ESA-listing in 1973 totaled 182 within this area, out of 184 encounters north of the Aleutian Islands during this time period.

Gulf of Alaska

NMFS proposes to designate CH in the Gulf of Alaska (Figure 2), to be described as an area delineated by a series of straight lines connecting the following coordinates in the order listed: 57°03′ N/153°00′ W, 57 °18′ N/ 151 °30′ W, 57 °00′ N/ 151° 30′ W, 56°45′ N/153°00′ W, and returning to 57°03′ N/153°00′ W. The area described by these boundaries lies completely within the waters of the United States and its Exclusive Economic Zone. Right whale encounters occurring after ESA-listing in 1973 totaled 5 within this area, out of 14 encounters in the Gulf of Alaska during this time period.

Existence of the PCEs Within the Proposed Critical Habitat

Southeastern Bering Sea Slope Waters

The Bering Sea slope is a very productive zone, sometimes referred to as the 'Greenbelt,' where annual primary production can exceed that on the adjacent shelf and basin by 60 percent and 270 percent, respectively (Springer *et al.*, 1996). Physical processes at the shelf edge, such as intensive tidal mixing, eddies and up-canyon flow, bring nutrients to the surface, thereby supporting enhanced productivity and elevated biomass of phytoplankton, zooplankton, and fish. Northern right whales in the western North Pacific have been observed in association with oceanic frontal zones that produce eddies southeast of Hokkaido Island, Japan, and southeast of Cape Patience (Mys Terpeniya), Sakhalin Island, in the Okhotsk Sea (Omura *et al.*, 1969). Whether or not the Bering Slope Current, or eddies shed from it, support production or entrain right whale prey is unknown.

From August to October in 1955 and 1956, Soviet scientists observed aggregations of *Calanus* between the Pribilof Islands and the Aleutian Islands (around 170° W long.) that were identified as *C. finmarchicus*, though, as mentioned above, were probably *C. marshallae* (Klumov, 1963). Flint *et al.* (2002) also report high concentrations of *C. marshallae* at frontal zones near the Pribilof Islands, with especially high biomass noted for the subthermohaline layer. This oceanographic front effectively separates slope and outer shelf *Neocalanus* spp. from the inshore middle shelf community of *C. marshallae* (Vidal and Smith, 1986). Right whales were found on both sides of this frontal zone (that coincides with the shelf break at 170 m) during both the 19th and 20th centuries. This is similar to the habitat described by Baumgartner *et al.* (2003a) for right whales feeding in the North Atlantic. Six right whales that were caught under scientific permit in late July-early August 1962–63 in Bering Sea slope waters had exclusively consumed *Neocalanus cristatus* (*Calanus cristatus*: Omura *et al.*, 1969). Although oceanic species such as *Neocalanus* usually enter diapause and migrate to depths greater than 200 m by late summer in the slope waters of the Bering Sea (Vidal and Smith, 1986), right whales may still be able to use these resources by targeting regions

where the bottom mixed layer forces the zooplankton into shallower, discrete layers (e.g. Baumgartner *et al.*, 2003a).

Southeastern Bering Sea (SEBS) Middle-Shelf Waters

The SEBS shelf has been the focus of intense oceanographic study since the late 1970s (e.g. Schumacher *et al.*, 1979; Coachman, 1986, Napp *et al.*, 2000; Hunt *et al.*, 2002a; Hunt *et al.*, 2002b), largely due to the considerable commercial fishing effort in the area (National Research Council, 1996). Coachman (1986) described the now well-established hydrographic domains of the inner-, middle- and outer-shelf, separated by a front or transition zone at roughly the 50–m (inner front) and 100–m (outer front) isobaths. During the 1990s, research focused on these domains demonstrated dynamic advection of nutrient-rich Bering slope water onto the shelf in both winter and summer, via eddies, meanders and up-canyon flow (Schumacher and Stabeno, 1998; Stabeno and Hunt, 2002). These intrusions of nutrient-rich water, physical factors related to water column stratification, and long summer day length result in a very productive food web over the SEBS shelf (e.g., Livingston *et al.*,1999; Napp *et al.*, 2002; Coyle and Pinchuk, 2002; Schumacher *et al.*, 2003). Specifically, copepod species upon which right whales feed (e.g. *Calanus marshallae*, *Pseudocalanus* spp. and *Neocalanus* spp.) are among the most abundant of the zooplankton sampled over the middle shelf (Cooney and Coyle, 1982; Smith and Vidal, 1986). Small, dense patches (up to densities greater than 500 mg/m–3) of euphausiids (*Thysanoëssa raschii*, *T. inermis*), potential right whale prey, have also been reported for waters near the SEBS inner front (Coyle and Pinchuk, 2002).

Zooplankton sampled near right whales seen in the SEBS in July 1997 included *C. marshallae*, *Pseudocalanus newmani*, and *Acartia longiremis* (Tynan, 1998). *C. marshallae* was the dominant copepod found in these samples as well as samples collected near right whales in the same region in 1999 (Tynan *et al.*, 2001). *C. marshallae* is the only ''large'' calanoid species found over the SEBS middle shelf (Cooney and Coyle, 1982; Smith and Vidal, 1986). Concentrations of copepods were significantly higher in 1994–98 than in 1980–81 by at least an order of magnitude (Napp *et al.*, 2002) and Tynan *et al.* (2001) suggest that this increased production may explain the presence of right whales in middle shelf waters. However, at least three right whales were observed in 1985 in the same location as the middle shelf sightings reported in the late 1990s (Goddard and Rugh, 1998).

Gulf of Alaska

The central GOA is dominated by the Alaskan gyre, a cyclonic feature that is demarcated to the south by the eastward flowing North Pacific Current and to the north by the Alaska Stream and Alaska Coastal Current, which flow westward near the shelf break. The bottom topography of this region is rugged and includes seamounts, ridges, and submarine canyons along with the abyssal plain. Strong semi-diurnal tides and current flow generate numerous eddies and meanders (Okkonen *et al.*, 2001) that influence the distribution of zooplankton.

Copepods are the dominant taxa of mesozooplankton found in the Gulf of Alaska and are patchily distributed across a wide variety of water depths. Three large herbivorous species comprise more than 70 percent of the biomass: *N. cristatus*, *N. plumchrus*, and *Eucalanus bungii* (Cooney 1986, 1987). In northern GOA shelf waters, the late winter and spring zooplankton is dominated by calanoid copepods (*Neocalanus* spp.), with a production peak in May; this is a cycle that appears resistant to environmental variability associated with El Niño/Southern Oscillation (ENSO) (Coyle and Pinchuk, 2003). In oceanic waters (50° N lat., 145° W long.), *N. plumchrus* dominate (Miller and Nielsen, 1988; Miller and Clemons, 1988) and have demonstrated dramatic shifts in the timing of annual peak biomass from early May to late July (Mackas *et al.*, 1998). From late summer through autumn, *N. plumchrus* migrate to deep water ranging from 200 m to 2000 m depending on location within the GOA (Mackas *et al.*, 1998). The three right whales caught under scientific permit on August 22, 1961, south of Kodiak Island had all consumed *N. plumchrus* (*Calanus plumchrus*: Omura *et al.*, 1969), potentially by targeting areas where adult copepods remained above 200 m (e.g. Baumgartner *et al.*, 2003a).

The area proposed as CH within the SEBS presents several similarities to that proposed within the Gulf of Alaska. Both areas are influenced by large eddies, submarine canyons, or frontal zones that enhance nutrient exchange and act to concentrate prey. These areas lie adjacent to major ocean currents (the ACC and the Aleutian ocean passes) and are characterized by relatively low circulation and water movement (P. Stabeno, pers. com.).

Right Whale Sightings as a Proxy for Locating the PCEs

As noted above, consistent sightings of right whales - even of single individuals and pairs - in a specific area in spring and summer over an extended period of time can be used with high confidence as an indicator of the presence of the PCEs in a feeding area. NMFS has used sighting records since the time of listing to make this determination because these records are more recent and are taken to be a more reliable indicator of current distribution of feeding whales than historical sightings, especially given that most of the latter relate to animals that were removed from the population by whaling and are thus no longer extant. Of the 184 post-listing right whale sightings reported north of the Aleutian Islands, 182 occurred within the specific area proposed as critical habitat in the Bering Sea. Since 1996, right whales have been consistently sighted in this area over a period of years during the spring and summer feeding seasons. For example, NMFS surveys alone recorded between two and four sightings in 1996 (Goddard and Rugh, 1998), 13 sightings in 2000 (Le Duc, *et al.*) and over 23 sightings in 2004. Single right whales as well as pairs and aggregations up to five animals were sighted during this period, and all sightings were within 100 nm^2 of one another. Based on consideration of these factors, NMFS concludes that the right whale sightings in the specific area in the Bering Sea described in Figure 2 are a suitable proxy for the presence of the PCEs and therefore proposes this area as critical habitat for the northern right whale in the North Pacific Ocean.

Recent sightings of right whales are fewer in number in the GOA than in the Bering Sea. However, three individuals were sighted recently in the specific area proposed as critical habitat in the GOA. These sightings occurred at a time when right whales typically feed in the North Pacific Ocean. In July 1998, a single right whale exhibiting behavior consistent with feeding activity was observed among a group of about eight humpback whales (Waite, Wynne and Mellinger, 2003). In August 2004, a NMFS researcher observed a single right whale among a group of humpbacks. In August 2005, a NMFS researcher reported yet another sighting of a right whale within 250 to 500 meters of groups of humpback and fin whales. Acoustic monitoring of the area conducted in summer 2000 recorded what appeared to be right whale calls in the area on September 6 (Waite, Wynne and Mellinger, 2003). Compared to the

Bering Sea sightings, the GOA right whale sightings do not provide as strong an indication of feeding right whales. However, individual right whales have been directly observed in 1998, 2004, and 2005 and detected acoustically in 2000 during the spring and summer feeding seasons in the specific area in the GOA described in Figure 2. It is also instructive that one of these animals was exhibiting feeding behavior at the time it was observed. Based on consideration of these factors, NMFS proposes that the right whale sightings in the specific area in the GOA described in Figure 2 are a reasonably reliable proxy for the presence of the PCEs and therefore proposes this area as critical habitat for the northern right whale in the North Pacific Ocean.

Activities Which May be Affected by This Revision

Section 4(b)(8) of the ESA requires that NMFS describe briefly and evaluate, in any proposed or final regulation to revise critical habitat, those activities that may destroy or adversely modify such habitat or that may be affected by such designation. A wide variety of activities may affect CH and, when carried out, funded, or authorized by a Federal agency, require that an ESA section 7 consultation be conducted. Such activities include, but are not limited to, oil and gas leasing and development on the Outer Continental Shelf, Federal fisheries management, pollutant discharges authorized by the Environmental Protection Agency, and military training exercises and other functions of the U.S. armed forces.

This proposed designation of CH will provide these agencies, private entities, and the public with clear notification of proposed CH for northern right whales in the North Pacific and the boundaries of the habitat. This proposed designation will also assist these agencies and others in evaluating the potential effects of their activities on CH and in determining if ESA section 7 consultation with NMFS is needed.

Exclusion Process

Section 4 (b)(2) of the ESA states that CH shall be designated on the basis of the best scientific and commercial data available and after taking into consideration the economic impact, impacts to national security, and any other relevant impact. Any area may be excluded from CH if the benefits of exclusion are found to outweigh those of inclusion, unless such exclusion would result in the extinction of the species. NMFS will apply the statutory provisions of the ESA, including those in section 3 that define ''critical habitat'' and ''conservation,'' to determine whether a proposed action might result in the destruction or adverse modification of CH.

Based upon the best available information, it appears that the probability of oil or gas exploration activities within (or immediately adjacent to) proposed right whale critical habitat is very low, certainly within the 10-year timeframe of NMFS' assessment. Likewise, there are no commercial production facilities in operation, currently under development, nor 'permitted' for future development, within these critical habitat areas. Unless contrary information emerges suggesting exploration and development are imminent, there is little expectation that Federal actions in the oil and gas sector will have the potential to ''destroy or adversely modify'' critical habitat as proposed under this action, within the analytical time horizon.

However, during the preparation of this proposed rule we became aware that the oil and gas industry has expressed current interest in exploring and developing oil and gas resources in the North Aleutian Basin OCS Planning Area. We also understand that the State of Alaska announced support for this activity. NMFS lacks specific information regarding this potential exploration and development activity and was unable to gather information in the time available to prepare this proposed rule. Therefore, NMFS specifically requests comment on the type of exploration and development activities under consideration and the likelihood for such activities to occur, a description of the areas in the North Aleutian Basin that may be affected by any such activities, the extent to which the activities may affect the proposed critical habitat, and any other issues that may be relevant to the analysis of impacts and the exclusion process under section 4(b)(2) of the ESA. Prior to the issuance of any final rule, NMFS will attempt to gather information on this topic. Any information NMFS acquires and public comments received on these issues will be considered in analyzing the impacts of the designation of critical habitat and in the section 4(b)(2) exclusion process.

While NMFS expects to consult annually on fishery related proposed actions that ''may affect'' the proposed CH, none of these consultations would be expected to result in a finding of ''adverse modification,'' and thus none would be expected to result in imposition of costs on commercial fishery participants. Because fisheries do not target or affect the PCEs for northern right whales, it then follows that no fishing or related activity (e.g., at-sea processing, transiting) would be expected to be restricted or otherwise altered as a result of critical habitat designation in the two areas being proposed. NMFS did not find any specific areas in which the costs exceed benefits for activities that may affect CH, and has therefore not proposed the exclusion of any areas from designation.

This action is anticipated to result in consultations on seafood processing waste discharges with EPA; Department of Defense (DoD) authorized military ''underway training'' activities; and USCG oil spill response plan approval, among others. It is unlikely that these activities will result in an ''adverse modification'' finding and, thus, no mandatory modifications would be imposed. It must follow then that no ''costs'' are imposed as a result of designation beyond the small costs attributable to inter-agency (occasionally intra-agency) consultation. As explained in the impacts analysis prepared for this action, some larger benefit accrues to society as a result of designation, including the educational value derived from identification and designation of the critical habitat areas within which the PCEs are found. Thus, NMFS believes that the benefits of exclusion are outweighed by the benefits of inclusion.

The NMFS analysis (available on the NMFS Alaska Region website *http://www.fakr.noaa.gov/*) did not find any specific areas which merit exclusion in consideration of economic impacts, nor have we determined that National security interests or other relevant impacts warrant the exclusion of any specific areas from this proposed designation. NMFS solicits comments on these benefits and costs as well as our determinations.

Public Comments Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this proposed rule to revise CH for the northern right whales in the North Pacific. This proposed action would amend the current regulations by adding CH in the North Pacific Ocean to the CH already designated along the Atlantic seaboard (Great South Channel, Cape Cod Bay, and the Southeastern United States). This proposed rule is responsive to the June 14, 2005, Northern District of California order and concerns only CH designation in the North Pacific Ocean. Comments or suggestions from the public, other concerned governments and agencies, the scientific community,

industry, or any other interested party concerning this proposed rule are solicited. Comments particularly are sought concerning:

(1) Maps and specific information describing the amount, distribution, and use type (e.g., feeding, calving, migration) of northern right whale habitat in the North Pacific Ocean;

(2) Information as to the identification of physical or biological features which may be essential to the conservation of the northern right whale in the North Pacific Ocean;

(3) Information on whether the copepods in feeding areas identified by NMFS as PCEs, or any other physical or biological features that may be essential to the conservation of the northern right whale in the North Pacific Ocean, may require special management considerations or protection;

(4) Information regarding the benefits of excluding any portions of the proposed CH, including the regulatory burden designation may impose;

(5) Information regarding the benefits of designating particular areas as CH;

(6) Current or planned activities in the areas proposed for designation and their possible impacts on proposed CH;

(7) Any information regarding potential oil and gas exploration and development activities in the North Aleutian Basin OCS Planning Area, including information on the type of exploration and development activities under consideration and the likelihood for such activities to occur, a description of the areas in the North Aleutian Basin that may be affected by any such activities, the extent to which the activities may affect the proposed critical habitat, and any other issues that may be relevant to the analysis of impacts and the exclusion process under section 4(b)(2) of the ESA;

(8) Any foreseeable economic or other potential impacts resulting from the proposed designations; and

(9) Whether specific unoccupied areas not presently proposed for designation may be essential to the conservation of the northern right whale in the North Pacific Ocean.

You may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). The proposed rule, maps, fact sheets, and other materials relating to this proposal can be found on the NMFS Alaska Region website at *http://www.fakr.noaa.gov/*. NMFS will consider all comments and information received during the comment period on this proposed rule for preparing the final rule. Accordingly, the final decision may differ from this proposal.

Public Hearings

50 CFR 424.16(c)(3) requires the Secretary to promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed regulation to revise CH. Requests for public hearing must be made in writing (see **ADDRESSES**) by December 19, 2005. Such hearings provide the opportunity for interested individuals and parties to give comments, exchange information and opinions, and engage in a constructive dialogue concerning this proposed rule. NMFS encourages the public's involvement in such ESA matters.

Classification

Regulatory Planning and Review

This proposed rule has been determined to be significant for purposes of Executive Order 12866. As part of our exclusion process under section 4(b)(2) of the ESA, the economic benefits and costs of the proposed critical habitat designations are described in our draft economic report (NMFS, 2005). This approach is in accord with OMB's guidance on regulatory analysis (OMB Circular A–4, Regulatory Analysis, September 17, 2003).

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). NMFS has prepared an initial regulatory flexibility analysis (IRFA) and this document is available upon request (see **ADDRESSES**). This IRFA evaluates the potential effects of the proposed CH designation on federally regulated small entities. The reasons for the action, a statement of the objectives of the action, and the legal basis for the proposed rule are discussed earlier in the preamble. A summary of the analysis follows.

The small entities that may be directly regulated by this action are those that seek formal approval (e.g., a permit) from, or are otherwise authorized by, a Federal agency to undertake an action or activity that ''may affect'' CH for the northern right whale. Submission of such a request for a Federal agency's approval, from a small entity, would require that agency (i.e., the 'action agency') to consult with NMFS (i.e., the 'consulting agency').

Consultations vary, from simple to complex, depending on the specific facts of each action or activity for which application is made. Attributable costs are directly proportionate to complexity. In the majority of instances projected to take place under the proposed CH designation, these costs are expected to accrue solely to the Federal agencies that are party to the consultation. In only the most complex of ''formal consultations'' might it be expected that a private sector applicant could potentially incur costs directly attributable to the consultation process itself. Furthermore, if destruction or adverse modification of CH is found at the conclusions of formal consultation, the applicant must implement modifications to avoid such effects. These modifications could result in adverse economic impacts.

An examination of the Federal agencies with management, enforcement, or other regulatory authority over activities or actions within, or immediately adjacent to, the proposed CH area, resulted in the following list. Potential action agencies may include: the EPA, U.S. Coast Guard (USCG), DoD, Minerals Management Service (MMS), and NMFS. Activities or actions with a nexus to these Federal agencies that are expected to require consultation include: EPA permitting of seafood processing waste discharges at-sea; USCG oil spill response plan approval, as well as emergency oil spill response; DoD authorization of military training activities in the Bering Sea and Aleutian Islands (BSAI) and GOA; MMS oil and gas exploration and production permitting; and NMFS fishery management actions in the BSAI and GOA.

A 10-year ''post-CH designation'' analytical horizon was adopted, during which time NMFS may reasonably expect to consult an estimated 27 times on CH-related actions with one or more of the action agencies identified above. The majority of the consultations are expected to be ''informal,'' projected to represent approximately 52 percent of the total. The more complex and costly ''formal'' consultations are projected to account for, perhaps, 37 percent; while the simplest and least costly ''pre-consultation'' are expected 11 percent of the time. These figures reflect the best estimates information and experience can presently provide.

On the basis of the underlying biological, oceanographic, and ecological science used to identify the PCEs that define CH for the right whale

in the Pacific, as well as the foregoing assumptions, empirical data, historical information, and accumulated experience regarding human activity in the BSAI and GOA, it is believed that only one federally authorized activity (among all those identified in the analyses and referenced above) has the potential to ''destroy or adversely modify'' northern right whale CH. This one class of activity is Outer Continental Shelf (OCS) oil and gas exploration and production.

As previously indicated, MMS has authority over OCS oil and gas permitting. An examination of published information from the MMS Alaska Region reveals that three MMS OCS planning areas overlap some portion of the proposed northern right whale CH areas. Further, MMS sources indicate that in only one of these has there been any exploratory well drilling (i.e., St. George Basin). A total of 10 exploratory wells were permitted, all of which were completed in 1984 and 1985 (with no subsequent associated exploration activity). It appears that there has been no activity on the part of the lease holders in this or the other four referenced areas to seek authorization to undertake additional exploratory activity or develop production facilities. MMS reports no planned or scheduled OCS lease sales for these areas, at least through 2007 (the latest projected date MMS has published on its web site). This suggests that the only private sector entities that potentially could be directly and adversely impacted by the proposed designation would be those entities that own the lease rights to develop oil and gas production facilities in these areas. However, during the preparation of this proposed rule NMFS became aware that the oil and gas industry has expressed current interest in exploring and developing oil and gas resources in the North Aleutian Basin OCS Planning Area and that the State of Alaska announced support for this activity. NMFS lacks specific information regarding this potential exploration and development activity and was unable to gather information in the time available to prepare this proposed rule. Therefore, NMFS specifically requests comment on the type of exploration and development activities under consideration and the likelihood for such activities to occur, a description of the areas in the North Aleutian Basin that may be affected by any such activities, the extent to which the activities may affect the proposed critical habitat, and any other issues that may be relevant to the analysis of impacts and the exclusion process under section 4(b)(2) of the ESA. Prior to the issuance of any final rule, NMFS will attempt to gather information on this topic. Any information NMFS acquires and public comments received on these issues will be considered in analyzing the impacts of the designation of critical habitat and in the section 4(b)(2) exclusion process.

When MMS records were consulted as to the identity of the entities holding leases to the wells in the St. George Basin, six businesses were listed for the 10 permitted exploratory wells. These include: SHELL Western E&P Inc. (2 wells); ARCO Alaska Inc. (3 wells)]; EXXON Corp. (2 wells); Mobile Oil Corp. (1 well) (now merged with EXXON); GULF Oil Corp. (1 well); and CHEVRON USA Inc. (1 well). These data were last updated, according to the MMS website, March 17, 2005. It would appear that none of these entities could reasonably be characterized as ''small,'' for RFA purposes. All are widely recognized multi-national corporations and employ more than ''500 full-time, part-time, temporary, or any other category of employees, in all of their affiliated operations worldwide'' (the criterion specified by SBA for assessing entity size for this sector).

Under the Regulatory Flexibility Act, the preferred alternative was compared to the ''No Action'' (or status quo) alternative and an alternative proposed by the petitioner, the Center for Biological Diversity. NMFS rejected the ''No Action'' alternative because it did not comply with the remand order in *Center for Biological Diversity* v. *Evans*, Civ. No. 04–04496 (N.D. Cal. June 14, 2005) or satisfy the agency's obligations under the ESA. NMFS rejected the petitioner's alternative because the best scientific information available did not support a finding that the physical or biological features essential for conservation of the right whale in the North Pacific Ocean are found throughout the area identified by the petitioner, and thus the area did not meet the ESA definition of critical habitat.

Because NMFS' analysis did not identify costs to any small entities attributable to the CH designation action, there is no identified alternative that imposes lesser impacts on this group while achieving the requirements of the ESA and the objectives of this action.

The action does not impose new recordkeeping or reporting requirements on small entities. The analysis did not reveal any Federal rules that duplicate, overlap or conflict with the proposed action.

Military Lands

The Sikes Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resource Management Plan (INRMP). The recent National Defense Authorization Act for Fiscal Year 2004 (Public Law No. 108–136) amended the ESA to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the ESA (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' NMFS has determined no military lands would be impacted by this proposed rule.

Executive Order (E.O.) 13211

On May 18, 2001, the President issued an Executive Order on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking any action that promulgates or is expected to lead to the promulgation of a final rule or regulation that (1) is a significant regulatory action under E.O. 12866 and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy.

NMFS has considered the potential impacts of this action on the supply, distribution, or use of energy and finds the designation of critical habitat will not have impacts that exceed the thresholds identified above.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, NMFS makes the following findings:

(a) This proposed 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; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.'' The designation of CH does not impose a legally binding duty on non-Federal government entities or private parties. Under the ESA, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify CH 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 CH, the legally binding duty to avoid destruction or adverse modification of CH 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 CH shift the costs of the large entitlement programs listed above to State governments.

(b) Due to the prohibition against take of this species both within and outside of the designated areas, we do not anticipate that this proposed rule will significantly or uniquely affect small governments. As such, a Small Government Agency Plan is not required.

Takings

In accordance with E.O. 12630, the proposed rule does not have significant takings implications. A takings implication assessment is not required. The designation of CH affects only Federal agency actions. Private lands do not exist within the proposed CH and therefore would not be affected by this action.

Federalism

In accordance with E.O. 13132, this proposed rule does not have significant federalism effects. A federalism assessment is not required. In keeping with Department of Commerce policies, we request information from, and will coordinate development of, this proposed CH designation with appropriate state resource agencies in Alaska. The proposed designation may have some benefit to state and local resource agencies in that the areas essential to the conservation of the species are more clearly defined, and the PCEs of the habitat necessary to the survival of the northern right whale are specifically identified.

Civil Justice Reform

In accordance with E.O. 12988, the Department of the Commerce has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the E.O. We are proposing to designate CH in accordance with the provisions of the ESA. This proposed rule uses standard property descriptions and identifies the PCEs within the designated areas to assist the public in understanding the habitat needs of the northern right whale.

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. This proposed 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

NMFS has determined that an environmental analyses as provided for under the National Environmental Policy Act of 1969 for CH designations made pursuant to the ESA is not required. See *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

Government-to-Government Relationship With Tribes

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. E.O. 13175 - Consultation and Coordination with Indian Tribal Governments- outlines the responsibilities of the Federal Government in matters affecting tribal interests.

NMFS has determined the proposed designation of CH for the northern right whale in the North Pacific Ocean would not have tribal implications, nor affect any tribal governments or issues. None of the proposed CH occurs on tribal lands or affects tribal trust resources or the exercise of tribal rights. The northen right whale is not hunted by Alaskan Natives for traditional use or subsistence purposes.

References Cited

A complete list of all references cited in this rulemaking can be found on our website at *http://www.fakr.noaa.gov/* and is available upon request from the NMFS office in Juneau, Alaska (see **ADDRESSES**).

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: October 27, 2005.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, we propose to amend part 226, title 50 of the Code of Regulations as set forth below:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation of part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. In § 226.203, paragraphs (a), (b), and (c) are redesignated as paragraphs

(a)(1), (a)(2), and (a)(3), respectively; new paragraphs (a) heading and (b) are added; and the section heading and the introductory text are revised to read as follows:

§ 226.203 Critical habitat for northern right whale (*Eubalaena glacialis*).

Critical habitat is designated in the North Atlantic Ocean, Bering Sea, and the Gulf of Alaska for the northern right whale as described in paragraphs (a) and (b) of this section. The textual descriptions of critical habitat are the definitive source for determining the critical habitat boundaries. General location maps are provided for critical habitat in the North Pacific Ocean for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(a) *North Atlantic Ocean.*

* * * * *

(b) *North Pacific Ocean*—(1) *Primary Constituent Elements.* The primary constituent elements essential for conservation of the northern right whale are the copepods *Calanus marshallae*, *Neocalanus cristatus*, *N. plumchris*, and *Thysanoëssa raschii* in areas of the North Pacific Ocean in which northern right whales are known or believed to feed, as described in paragraphs (2) and (3).

(2) *Bering Sea.* An area described by a series of straight lines connecting the following coordinates in the order listed:

58°00′ N/168°00′ W
58°00′ N/163°00′ W
56°30′ N/161°45′ W
55°00′ N/166°00′ W
56°00′ N/168°00′ W
58°00′ N/168°00′ W.

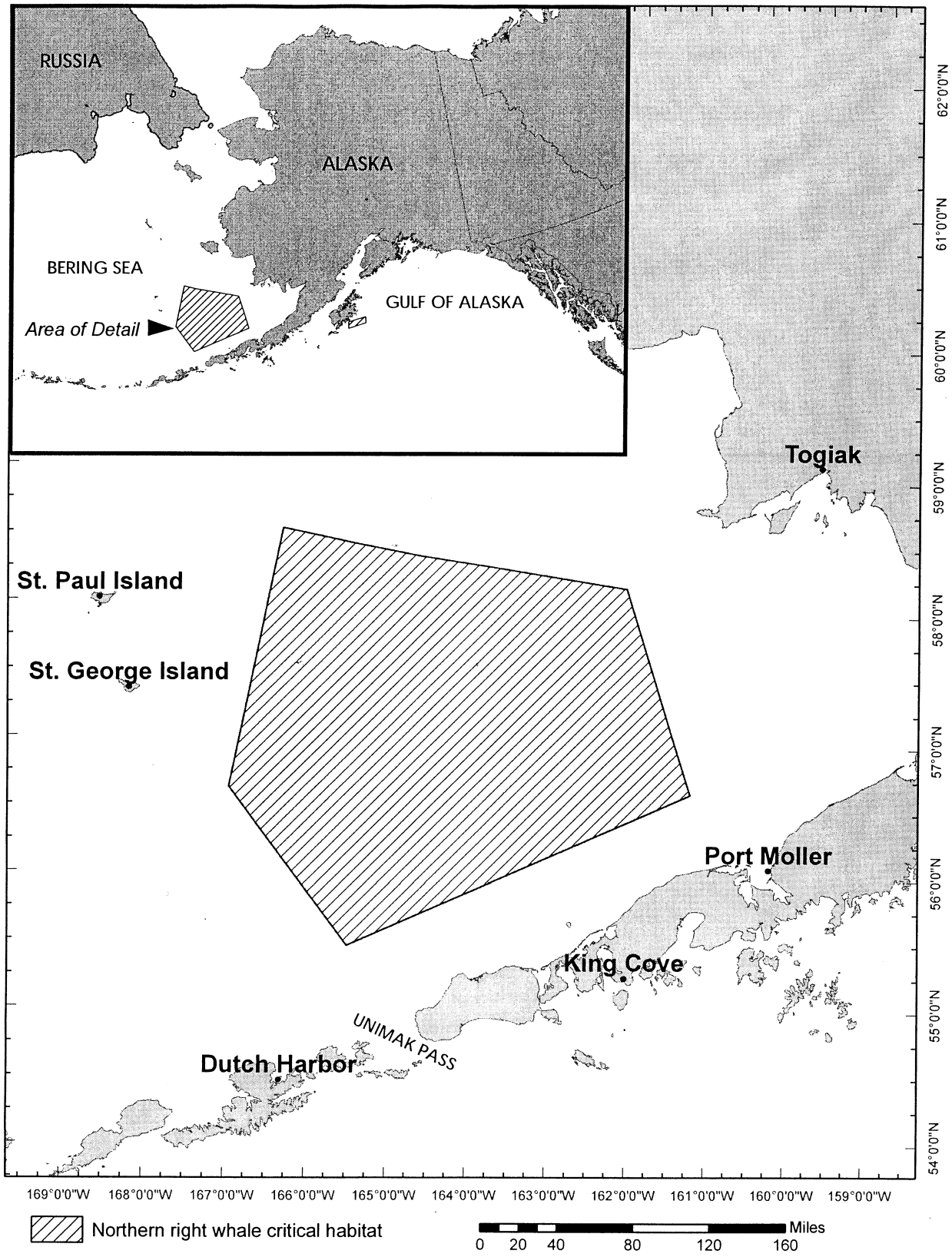
(3) *Gulf of Alaska.* An area described by a series of straight lines connecting the following coordinates in the order listed:

57°03′ N/153°00′ W
57°18′ N/151°30′ W
57°00′ N/151°30′ W
56°45′ N/153°00′ W
57°03′ N/153°00′ W.

(4) Maps of critical habitat for the northern right whale in the North Pacific Ocean follow:

BILLING CODE 3510–22–S

BERING SEA


RUSSIA
ALASKA
BERING SEA
GULF OF ALASKA
Area of Detail
Togiak
St. Paul Island
St. George Island
Port Moller
King Cove
UNIMAK PASS
Dutch Harbor
62°0'0"N
61°0'0"N
60°0'0"N
59°0'0"N
58°0'0"N
57°0'0"N
56°0'0"N
55°0'0"N
54°0'0"N
169°0'0"W
168°0'0"W
167°0'0"W
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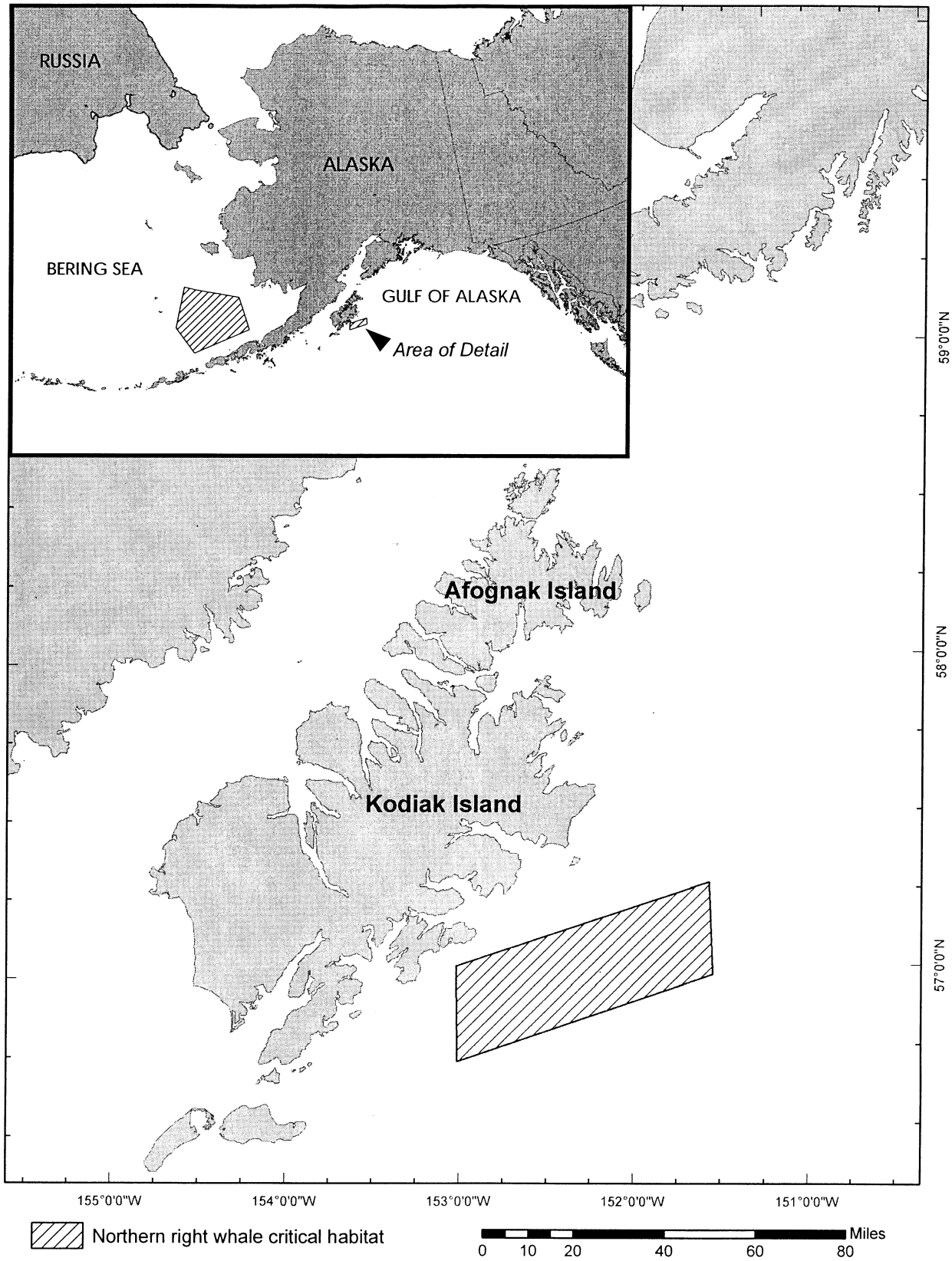
163°0'0"W
162°0'0"W
161°0'0"W
160°0'0"W
159°0'0"W
Northern right whale critical habitat
Miles
0 20 40 80 120 160

GULF OF ALASKA



[FR Doc. 05–21861 Filed 10–28–05; 2:20 pm]

BILLING CODE 3510–22–C

Notices

Federal Register

Vol. 70, No. 211

Wednesday, November 2, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (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: Submit comments on or before January 3, 2006.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB No: OMB 0412–NEW.

Form No.: N/A.

Title: Summer Internship Application.

Type of Review: NEW Information Collection.

Purpose: The United States Agency for International Development, Africa Bureau, intends to use the Summer Internship Application to collect information from approximately 300 student applicants to its summer internship programs for USAID Missions in Africa and in Washington, DC.

Annual Reporting Burden:

Respondents: 300.

Total annual responses: 300.

Total annual hours requested: 150 hours.

Dated: October 27, 2005.

Joanne Paskar,

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

[FR Doc. 05–21871 Filed 11–1–05; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lassen National Forest, Hat Creek Ranger District, CA, North 49 Project Forest Health Recovery Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent.

SUMMARY: The Forest Service proposes to develop a network of defensible fuel profile zones (DFPZ's) and wildland urban interface zones (WUIs), conduct area thinning, reduce surface fuels, establish group selection harvest units, and restore remnant aspen stands on the Hat Creek Ranger District in the Lassen National Forest. Treatments within DFPZs would include 9,975 acres of forest and plantation thinning followed by underburning and/or mechanical fuels reduction. Approximately 2,060 acres would be underburned only. Treatments outside of DFPZs would include 3,660 acres of forest and plantation thinning followed by underburning and/or mechanical fuels reduction to develop three WUIs. A modified thinning prescription would be applied in some areas to maintain wildlife habitat and structural diversity. An additional 95 acres of brushfield treatments would also be completed outside of DFPZs. Group selection treatments would be implemented on 1,186 acres across the project area and 49 acres of aspen would be restored. Approximately 1.4 miles of new system roads and 0.7 miles of temporary non-system roads would be constructed. Approximately 3.9 miles of roads would be decommissioned. The project would be implemented through a combination of commercial timber sales, service contracts, and force account crews. These management activities were developed to implement and be consistent with the Lassen National Forest (LNF) Land and Resource Management Plan (LRMP, 1993), as amended by the Herger-Feinstein Quincy Library Group Forest Recovery Act FEIS, FSEIS, and ROD's (1999, 2003), and the Sierra Nevada Forest Plan Amendment FEIS (2001) and FSEIS/ROD (2004).

Decision to be made: The decision to be made is whether to implement the proposed action as described above, to meet the purpose and need for action through some other combination of activities, or to take no action at this time.

Scoping process: Comments concerning the scope of the analysis should be received in writing within 15 days of the date of publication of this Notice of Intent in the **Federal Register**.

The project was initially listed in the Forest's February 2004 quarterly edition of the Schedule of Proposed Actions (SOPA). Scoping letters were sent in March 2004 to those who responded to the SOPA and other identified interested and affected individuals and government agencies. In the SOPA, the mode of environmental documentation was predicted as an environmental assessment.

At this time, the environmental analysis will be documented in an environmental impact statement. Since only minor changes are being made to the proposed action that was previously scoped, the scoping period at this time is brief. Those who responded during the March 2004 scoping period will be contacted again. In addition, scoping letters previously received by the Forest Service from the first scoping period will continue to be used for this process. A public scoping meeting is not anticipated at this time.

The scoping process will be used to identify issues regarding the proposed action. An issue is defined as a point of dispute, debate, or disagreement related to a specific proposed action based on its anticipated effects. Significant issues brought to our attention are used during an environmental analysis to develop alternatives to the proposed action. Some issues raised in scoping may be

considered non-significant because they are: (1) Beyond the scope of the proposed action and its purpose and need; (2) already decided by law, regulation, or the Land and Resource Management Plan; (3) irrelevant to the decision to be made; or (4) conjectural and not supported by scientific or factual evidence.

Alternatives: Alternatives proposed to date are the Proposed Action as describe above and the No Action.

Identification of permits or licenses required: No permits or licenses have been identified to implement the proposed action.

Lead, joint lead, and cooperating agencies: The USDA Forest Service is the lead agency for this proposal; there are no cooperating agencies.

Estimated dates for filing: The expected filing date with the Environmental Protection Agency for the draft EIS March 6, 2006. The expected filing date for the final EIS is July 24, 2006.

Person to which comments may be mailed: Comments may be submitted to: District Ranger, Hat Creek Ranger District, at P.O. Box 220, Fall River Mills, CA, 96028 or (530) 336–5758 (fax) during normal business hours. The Hat Creek Ranger District business hours are from 8 a.m. to 4:30 p.m. Monday through Friday. Electronic comments, in acceptable plain text (.txt), rich text (.rtf), or Word (.doc) formats, may be submitted to: *comments-pacificsouthwest-lassen-hatcreek@fs.fed.us* using Subject: North 49 Forest Health Recovery Project.

Reviewer's obligation to comment: The comment period on the draft EIS will be 49 days from the date the Environmental Protection Agency publishes the notice of availability of the draft EIS in the **Federal Register**.

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 statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also environmental objections that could be raised at the draft environmental impact statement 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. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

FOR FURTHER INFORMATION CONTACT: Scott Stawiarski, Interdisciplinary Team Leader, may be contacted by phone at (530) 336–5521 for more information about the proposed action and the environmental impact statement or at the Hat Creek Ranger District, P.O. Box 220, Fall River Mills, CA 96028.

Responsible official and mailing address: Laurie Tippin, Forest Supervisor, 2550 S. Riverside Drive, Susanville, CA 96130.

Dated: October 27, 2005.

Elizabeth Norton,

Acting Forest Supervisor, Lassen National Forest.

[FR Doc. 05–21798 Filed 11–1–05; 8:45 am]

BILLING CODE 5410–99–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, November 14, 2005. The meeting will include routine business and the review and recommendation for implementation of submitted project proposals.

DATES: The meeting will be held November 14, 2005, from 4 p.m. until 7 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Bob Talley, RAC Coordinator, Klamath National Forest, (530) 841–4423 or electronically at *rtalley@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: October 27, 2005.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 05–21797 Filed 11–1–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Announcement of Performance Review Board Members

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice announces the names of new and existing members of the Economic Development Administration's Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Deanna Shepherd, Economic Development Administration, Office of Human Resources, at (202) 482–2686, Room 7217, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: 5 CFR 430.310 requires agencies to publish notice of Performance Review Board appointees in the **Federal Register** before their service begins. The role of the Performance Review Board is to review and make recommendations to the appointing authority on performance management issues such as appraisals, pay adjustments, bonuses, and Presidential Rank Awards for members of the Senior Executive Service. Sandy K. Baruah, Acting Assistant Secretary of Commerce for Economic Development, Economic Development Administration (EDA) has named the following members of the Economic Development Administration Performance Review Board:

1. Aimee Strudwick, Chief of Staff to the Deputy Secretary, Office of the Secretary, (Chairperson) (new);
2. Barbara Retzlaff, Director, Office of Budget, Office of the Secretary (new);
3. John Kneuer, Deputy Assistant Secretary of Commerce for

Communications and Information, National Telecommunications and Information Administration (new);

4. Lisa Casias, Acting Deputy Chief Financial Officer and Acting Director for Financial Management, Office of the Secretary;

5. William J. Fleming, Deputy Director, Office of Human Resources Management, Office of the Secretary (new);

6. Deanna L. Shepherd, Executive Secretary to the EDA Performance Review Board, EDA's Office of Human Resources.

Dated: October 27, 2005.

Deanna L. Shepherd,

Human Resources Officer.

[FR Doc. 05–21854 Filed 11–1–05; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–855]

Notice of Continuation of Antidumping Duty Order on Certain Non–Frozen Apple Juice Concentrate from the People's Republic of China

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

EFFECTIVE DATE: November 2, 2005.

FOR FURTHER INFORMATION CONTACT: Maureen Flannery at (202) 482–3020 or Frances Veith at (202) 482–4295, AD/CVD Operations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230.

SUMMARY: The U.S. Department of Commerce (Department), pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), has determined that revocation of the antidumping duty order on certain non–frozen apple juice concentrate (NFAJC) from the People's Republic of China (PRC) would likely lead to continuation or recurrence of dumping. On October 21, 2005, the International Trade Commission (ITC), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on certain NFAJC from the PRC would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on certain NFAJC from the PRC.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2005, the Department initiated, and the ITC instituted, a sunset review of the antidumping duty order on certain NFAJC from the PRC, pursuant to section 751(c) of the Act. *See Initiation of Five-year (Sunset) Reviews*, 70 FR 22632 (May 2, 2005) and *Non–Frozen Concentrate Apple Juice from China*, 70 FR 22694 (May 2, 2005). As a result of its review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail were the order revoked. *See Non–Frozen Apple Juice Concentrate from the People's Republic of China (PRC); Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order*, 70 FR 53339 (September 8, 2005). On October 21, 2005, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on certain NFAJC would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Non–Frozen Concentrated Apple Juice from China*, 70 FR 61309 (October 21, 2005).

Scope of the Order

The product covered by this antidumping order is certain NFAJC. Certain NFAJC is defined as all non–frozen concentrated apple juice with a Brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this order are: frozen concentrated apple juice; non–frozen concentrated apple juice that has been fermented; and non–frozen concentrated apple juice to which spirits have been added.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 2106.90.52.00, and 2009.70.00.20 before January 1, 2002, and 2009.79.00.20 on or after January 1, 2002. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Determination

As a result of the determinations by the Department and the ITC that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on certain NFAJC from the PRC. U.S. Customs and Border Protection will continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order is the date of publication of the **Federal Register** of this Notice of Continuation in accordance with 19 CFR 351.218(f)(4). Pursuant to sections 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of this order not later than October 2010.

We are issuing and publishing the results and notice in accordance with sections 751(c) and 752, and 777(i)(1) of the Act.

Dated: October 27, 2005.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 05–21865 Filed 11–1–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal from Brazil: Notice of Court Decision Not in Harmony

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

SUMMARY: On October 6, 2005, in *Elkem Metals Company and Globe Metallurgical Inc., v. United States*, Slip Op. 05–134, the Court of International Trade (CIT) affirmed the Final Results of Redetermination Pursuant to Court Remand (Remand Redetermination) issued by the Department of Commerce (the Department) on July 14, 2004. Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit (CAFC) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department will continue to order the suspension of liquidation of the subject merchandise, where appropriate, until there is a ''conclusive'' decision in this case. If the case is not appealed, or if it is affirmed on appeal, the Department will instruct U.S. Customs and Border Protection (CBP) to liquidate all relevant entries from Compania Brasilieira Carbureto De Calcio (CBCC) and Electrosilex, S.A. (Electrosilex), as appropriate.

EFFECTIVE DATE: November 2, 2005.

FOR FURTHER INFORMATION CONTACT: Zev Primor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–4114, fax: (202) 482–5105.

SUPPLEMENTARY INFORMATION:

Background

On February 23, 2001, the Department published the final results of administrative review of the antidumping duty order on silicon metal from Brazil for the period July 1, 1998, through June 30, 1999. *See Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*; 66 FR 11256 (February 23, 2001) (*Final Results*). CBCC and Electrosilex filed a lawsuit challenging certain aspects of the *Final Results*. Specifically, CBCC argued that the Department used an incorrect interest rate to calculate its home market imputed credit expense, while Electrosilex asserted that the Department's decision to apply total adverse facts available (AFA) was not in accordance with law and unsupported by record evidence. On April 15, 2004, the CIT remanded this case back to the Department and instructed it ''...to impute anew (1) CBCC's home–market credit costs and (2) Electrosilex's margin of dumping for the period of review implicated that is in accordance with law and supported by substantial evidence on the record.'' *See Elkem Metals Company and Globe Metallurgical Inc., v. United States*, Slip Op. 04–36. The Department issued its final results of remand redetermination on July 14, 2004. *See* Remand Redetermination. On October 6, 2005, the CIT affirmed the Department's final results of remand redetermination in their entirety.

Suspension of Liquidation

The CAFC, in *Timken*, held that the Department must publish notice of a decision of the CIT or the CAFC which is not in harmony with the Department's determination. Publication of this notice fulfills that obligation. The CAFC also held that the Department must suspend liquidation of the subject merchandise until there is a ''conclusive'' decision in the case. Therefore, pursuant to *Timken*, the Department must continue to suspend liquidation of unliquidated entries pending the expiration of the period to appeal the CIT's October 6, 2005, decision affirming the Department's remand results or pending a final decision of the CAFC if that decision is appealed. Upon expiration of the period to appeal, or if the CIT's decision is appealed and the CAFC's decision is not in harmony with the Department's determination in the *Final Results*, the Department will publish in the **Federal Register** a notice of amended final results for the 1998–1999 administrative review of silicon metal from Brazil.

We are issuing and publishing this notice in accordance with section 516A(c)(1) of the Tariff Act of 1930, as amended.

Dated: October 26, 2005.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–21864 Filed 11–1–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102005B]

Fisheries of the Exclusive Economic Zone Off Alaska; Notice of Crab Rationalization Program Public Workshop

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

ACTION: Notice of public workshop.

SUMMARY: NMFS will present a public workshop on the new Crab Rationalization Program (Program) for participants in the Bering Sea and Aleutian Islands (BSAI) king and Tanner crab fisheries. At this workshop, NMFS will review the Program, discuss the key Program elements, provide information on the application process, and answer questions. This workshop is specifically intended to address issues related to the Arbitration System portion of the Program. NMFS is conducting this public workshop to assist participants comply with the requirements of this new Program.

DATES: Workshop will be held November 18, 2005, from 10 a.m. to 1 p.m. Pacific standard time.

ADDRESSES: The workshop will be held at the Qwest Field and Event Center, Room C3, 800 Occidental Ave. South, Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228 or *glenn.merrill@noaa.gov*.

SUPPLEMENTARY INFORMATION: On March 2, 2005, NMFS published a final rule implementing the Program as Amendments 18 and 19 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (70 FR 10174). The final rule was effective on April 2, 2005.

NMFS has conducted six public workshops on key Program elements. Four of those workshops were conducted in March and April of 2005 in Alaska, Oregon, and Washington to assist fishery participants comply with the requirements of the Program. At these workshops, NMFS reviewed the Program, discussed the key Program elements, and provided information on the application process. The remaining two workshops were held in Seattle, Washington in May and September of 2005, and focused on the Arbitration System.

The November 18, 2005 workshop is also intended to focus on the Arbitration System. One issue not previously addressed in the May and September workshops will be the focus. Specifically, NMFS will provide an overview of existing regulatory requirements which create timing conflicts related to the start of the crab fishing season, the deadline for the initiation of binding arbitration, and the deadline for initiating share matching under the Arbitration System (see 50 CFR 680.20(h)(3)(iv) for more details). NMFS will review this timing conflict and provide an opportunity for public comments. Program elements related to economic data collection, monitoring and enforcement, electronic reporting, quota share and individual fishing quota application and transfer provisions, the appeals process, fee collection, and the loan program may be addressed secondarily. Additionally, NMFS will answer questions from workshop participants. For further information on the Program, please visit the NMFS Alaska Region Internet site at *www.fakr.noaa.gov*.

Special Accommodations

This workshop is physically accessible to people with disabilities. Requests for special accommodations should be directed to Glenn Merrill (see **FOR FURTHER INFORMATION CONTACT**) by November 10, 2005.

Dated: October 27, 2005.

Anne M. Lange,

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

[FR Doc. 05–21872 Filed 11–1–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Marine Protected Areas Center West Coast Region Public Dialogue Meetings

AGENCY: National Ocean Service, NOAA, Department of Commerce.

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of two (2) West Coast Region Public Dialogue meetings concerning the development of the national system of marine protected areas (MPAs) pursuant to Executive Order 13158 (May 26, 2000). The State of California Public Dialogue will be held December 12, 2005, 6:30–9 p.m. in San Francisco, California. The State of Washington Public Dialogue will be held December 13, 2005, 6:30–9 p.m. in Seattle, Washington. These are the fourth and fifth in a series of regional dialogues being held around the United States to solicit input from the public concerning their views on a national system of MPAs. Additional meetings will be announced and scheduled pending available resources. Refer to the web page listed below for background information concerning the development of the national system of MPAs. Meeting room capacity for each of these meetings is limited to 75 people, and as such interested participants are required to RSVP via the e-mail address (preferable), fax number, or phone number listed below, by no later than 5 p.m. p.s.t. on November 28, 2005. In the RSVP, please indicate which Public Dialogue meeting, either California or Seattle, you plan to attend. Attendance will be available to the first 75 people who responded for each meeting.

Those who cannot attend due to space, schedule, or other limitations can find background materials at the web page listed below and may submit written comments to the e-mail, fax, or mailing address below. A written summary of the meeting and any other comments received will be posted on the web site within one month of its occurrence.

DATES: The State of California Public Dialogue meeting will be held Monday, December 12, 2005, from 6:30 p.m. to 9 p.m. p.s.t. The State of Washington Public Dialogue meeting will be held Tuesday, December 13, 2005, from 6:30 p.m. to 9 p.m. p.s.t.

ADDRESSES: The State of California Public Dialogue meeting will be held at The Presidio of San Francisco, Log Cabin, 1299 Storey Avenue, San Francisco, California 94129. The State of Washington Public Dialogue meeting will be held at The Center for Wooden Boats, 1010 Valley Street, Seattle, Washington 98109.

FOR FURTHER INFORMATION CONTACT: Jonathan Kelsey, National System Development Coordinator, National Marine Protected Areas Center, 1305 East-West Highway, Silver Spring, Maryland, 20910. (Phone: 301–713–3155 ext. 130, Fax: 301–713–3110); e-mail: *mpa.comments@noaa.gov;* or visit the National MPA Center Web site at *http://mpa.gov/national_system/*).

SUPPLEMENTARY INFORMATION: These Public Dialogue meetings are intended to solicit the public's views regarding the development of a national system of MPAs. All input received via these dialogues, e-mail, or fax will be for the public record and considered in developing a draft proposal for a national system of MPAs. At this preliminary stage in the effort to develop the national system, NOAA does not intend to respond to any comments received via these dialogues, e-mail, fax, or mail. Once a draft proposal is developed for the national system of MPAs, NOAA will publish it in the **Federal Register** for formal public comment and will subsequently provide a formal response to comments received.

Matters to be Considered: Executive Order 13158 (May 26, 2000) calls for the development of a national system of MPAs. These Public Dialogue meetings are intended to solicit the public's views concerning the development of a national system of MPAs. Refer to the web page listed above for background information concerning these dialogues and the development of the national system of MPAs.

Dated: October 26, 2005.

Eldon Hout,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 05–21811 Filed 11–1–05; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Cancellation of Marine Protected Areas Federal Advisory Committee Meeting

AGENCY: National Ocean Service, NOAA, Department of Commerce.

ACTION: Notice of meeting cancellation.

SUMMARY: Notice is hereby given that the meeting of the Marine Protected Areas Federal Advisory Committee (MPAFAC), which was to be held November 1–3, 2005, in Corpus Christi, Texas is cancelled (**Federal Register**, v.70, No. 191, p. 57863–57864). Notice of the rescheduled date will be published in the **Federal Register** and posted on *http://www.mpa.gov.*

FOR FURTHER INFORMATION CONTACT: Lauren Wenzel, Designated Federal Officer, MPAFAC, National Marine Protected Areas Center, 1305 East-West Highway, Silver Spring, Maryland, 20910. Phone: (Phone: 301–713–3100 x136, Fax: 301–713–3110); email: *lauren.wenzel@noaa.gov;* or visit the National MPA Center Web site at *http://www.mpa.gov*).

Dated: October 26, 2005.

Eldon Hout,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 05–21816 Filed 11–1–05; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Review Panel

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, strategic planning, education, communications and extension, science and technology programs, and other matters as described below:

DATES: The announced meeting is scheduled during two days: Tuesday, November 15, 8:30 a.m. to 5:15 p.m.; Wednesday, November 16, 8:30 a.m. to 12:30 p.m.

ADDRESSES: Consortium for Oceanographic Research and Education (CORE), 1201 New York Avenue, Northwest, 4th Floor Conference Room, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Dr. Francis M. Schuler, Designated Federal Official, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11837, Silver Spring, Maryland 20910, (301) 713–2445. The Review Panel web page address is *http://*

www.nsgo.seagrant.org/leadership/review_panel.html.

SUPPLEMENTARY INFORMATION: The Panel, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128). The Panel advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice. The following agenda may be obtained via internet at the web address given above in this notice in the section **FOR FURTHER INFORMATION CONTACT**.

Tuesday, November 15, 2005

8:45 a.m.–5:15 p.m.

8:45 a.m.—Welcoming and Opening Remarks

9 a.m.—Program Evaluation Committee Report

9:45 a.m.—Executive Committee Report

10:30 a.m.—Break

10:45 a.m.—National Sea Grant Office Director's Update

11:45 a.m.—Sea Grant Association President's Report

12:15 p.m.—Lunch

1:30 p.m.—NOAA Research Update

2:15 p.m.—Panel Subcommittee Updates

3:15 p.m.—Break

3:30 p.m.—Panel Business Practices

4 p.m.—Panel Priorities Open Discussion

5 p.m.—Nominations Committee Report

5:15 p.m.—Adjourn

Wednesday, November 16, 2005

8:45 a.m.–12:30 p.m.

8:45 a.m.—Founder's Report

10 a.m.—NOAA Legislative Update

10:30 a.m.—Break

10:45 a.m.—National Sea Grant Office Staff Updates

12:15 p.m.—Wrap-Up

12:30 p.m.—Adjourn

This meeting will be open to the public.

Dated: October 26, 2005.

Mark E. Brown,

Chief Financial Officer, Office of Oceanic and Atmospheric Research.

[FR Doc. 05–21814 Filed 11–1–05; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Emergency Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, (PRA 95) (44 U.S.C. Chapter 35). The Corporation has requested OMB to review and approve its emergency request for a period of six months. A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Corporation for National and Community Service, Disaster Response Team, Mr. Mikel Herrington, (202) 606–6706 or by e-mail at *mherrington@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5:00 p.m. eastern time, Monday through Friday.

DATES: Written comments must be submitted to the individuals and offices listed in the **ADDRESSES** section by December 2, 2005.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to (1) Corporation for National and Community Service, and (2) the Office of Information and Regulatory Affairs. Please send comments to:

(1) Corporation for National and Community Service, Attn: Mikel Herrington, Disaster Response Team Leader:

(a) By fax to: (202) 565–2791, Attention: Mikel Herrington, Disaster Response Team Leader; and

(b) Electronically by e-mail to: *mherrington@cns.gov*; and,

(2) Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two:

(a) By fax to: (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(b) Electronically by e-mail to: *Katherine_T._Astrich@omb.eop.gov*.

SUPPLEMENTARY INFORMATION:

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the Corporation's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Emergency request.

Agency: Corporation for National and Community Service.

Title: Disaster Response Data Collection Instrument.

OMB Number: None.

Agency Number: None.

Affected Public: Corporation for National and Community Service funded programs and general public.

Total Respondents: 14,642.

Frequency: Disaster relief database, every 2 weeks; the Volunteer Availability Form, once a year.

Average Time Per Response: 30 minutes.

Estimated Total Burden Hours: 197,667 per year.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments

The Corporation has implemented this data collection system to organize and manage information related to disaster recovery program activities as they occur in the field. All Corporation-supported programs that assist with disaster response/recovery are asked to report up-to-date information. The role of the database is to gather and subsequently disseminate disaster recovery program activities from all CNCS programs as soon as the activities occur. Due to recent major hurricane activity in the southern United States, it is essential that the Corporation has this disaster recovery collection instrument in place as soon as possible. Therefore, the Corporation has requested OMB's emergency review and approval by October 31, 2005

Dated: October 19, 2005.

Mikel Herrington,

Disaster Response Team Leader.

[FR Doc. 05–21903 Filed 11–1–05; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–07]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–07 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 27, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

25 OCT 2005
In reply refer to:
I-05/008404

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-07, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $280 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

JEFFREY B. KOHLER
LIEUTENANT GENERAL, USAF
DIRECTOR

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to: **House Committee on International Relations**
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States - Missiles and Pilot Training Program

The Taipei Economic and Cultural Representative Office in the United States has requested a possible sale of 10 AIM-9M Sidewinder Missiles and 5 AIM-7M Sparrow Missiles, continuation of a pilot training program and logistics support for F-16 aircraft to include flight training, supply and maintenance support, spare and repair parts, support equipment, program management, publications, documentation, personnel training and training equipment, fuel and fueling services, and other related program requirements necessary to sustain a long-term CONUS training program. The estimated cost is $280 million.

This sale is consistent with United States policy and Public Law 96-8.

In accordance with the Taiwan Relations Act, the United States makes available sufficient defense items and services to allow Taiwan to provide for its own self-defense.

It is vital to the U.S. national interest to assist the recipient in developing and maintaining a strong and ready self-defense capability, which will contribute to an acceptable military balance in the area. This proposed sale is consistent with those objectives.

The recipient will use these weapons for live fire exercises at the Luke Air Force Base training facility. These missiles will be drawn from the U.S. inventory if needed and remain in CONUS. These services and equipment are used in the continuing pilot training program at Luke Air Force Base, Arizona. This program enables the recipient to develop mission ready and experienced pilots through CONUS training. The training provides a "capstone" course that takes experienced pilots and significantly improves their tactical proficiency. Training is a key component of combat effectiveness, and recipient pilots who have graduated from the existing program have performed brilliantly.

The proposed sale of missiles and support will not affect the basic military balance in the region.

There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment of any U.S. Government or contractor representatives to recipient.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 06-07

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The missiles will be retained and used in CONUS for live-fire exercises.

2. The AIM-9M Sidewinder missile is a supersonic, air-to-air guided missile that employs an Infrared Guidance System and an active optical Target Detector. A reduced-smoke solid-propellant Rocket Motor propels the missile, which has detachable, double-delta control surfaces that improve the missiles' maneuverability. The AIM-9M utilizes a guidance control section with improved infrared counter-countermeasures. With enhanced background discrimination capability and reduced-smoke rocket motor modifications, the AIM-9M has an increased ability to locate and lock on a target, and decreases opponents' chances of visual missile detection. The AIM-9M is configured with an Annular Blast Fragmentation Warhead. The AIM-9M all up round (AUR) is classified Confidential; major components and subsystems range from Unclassified to Confidential; and technical data and other documentation are classified up to Secret.

3. The AIM-7M Sparrow missile is a supersonic, medium-range, aerial-intercept, semi-active radar-guided, air-to-air, boost-glide missile that guides on Radio Frequency (RF). The AIM-7M has all-weather, all-altitude operational capability, can attack high-performance aircraft from any direction, and incorporates Electronic-Counter-Countermeasure capabilities. A dual-thrust, solid-propellant Rocket Motor propels the missile, and semi-active, continuous wave, homing radar, and hydraulically-operated control surfaces direct and stabilize the missile on a proportional navigation course to the target. The AIM-7M is configured with an Annular Blast Fragmentation Warhead. The AIM-7M AUR is classified Confidential; major components and subsystems range from Unclassified to Confidential; and technical data and other documentation are classified up to Secret.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software, the information could be used to develop countermeasures, which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 05–21781 Filed 11–1–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–17]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–17 with attached transmittal, policy justification, Sensitivity of Technology and Section 620C(d).

Dated: October 27, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

25 OCT 2005

In reply refer to:
I-05/012156

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-17, concerning the Department of the Air Force's proposed Letters(s) of Offer and Acceptance to Greece for defense articles and services estimated to cost $3.1 billion. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification required by subsection 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with the principles set forth in subsection 620C(b) of that Act as codified in section 2373 of title 22, United States Code.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**
4. **Section 620C(d)**

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 06-17

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Greece

(ii) Total Estimated Value:

Major Defense Equipment*	$2.5 billion
Other	$ .6 billion
TOTAL	$3.1 billion

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:

Major Defense Equipment (MDE)

40 F-16C/D Block 52+ aircraft with F100-PW-229 engines and APG-68(V)9 radars;
42 Joint Helmet Mounted Cueing Systems;
40 AN/AVS-9 Generation III Aviation Night Vision Goggles;
190 LAU-129/A Launchers;
48 Link-16 Multifunctional Information Distribution System-Low Volume Terminals (MIDS-LVT);
3 Link-16 Ground Stations;
10 LANTIRN Targeting pods;
11 Reconnaissance pods;
2 Reconnaissance Ground Stations;
40 APX-113 Advanced Identification Friend or Foe (IFF) systems;
43 AN/ALQ-187 Advanced Self-Protection Integrated Suites;
6 spare F100-PW-229 engines;
3 APG-68(V)9 spare radar sets;
4 AGM-154C Joint Standoff Weapons;
6 Joint Direct Attack Munitions (3 BLU-10 and 3 MK-84 bomb bodies);
4 Wind Compensated Munitions Dispenser;

* as defined in Section 47(6) of the Arms Export Control Act.

Associated support equipment, software development/integration, modification kits, capability to employ a wide variety of munitions, spares and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability will also be provided. The estimated cost is $3.1 billion.

(iv) **Military Department: Air Force (SNY)**

(v) **Prior Related Cases, if any:**
FMS case SNX - $1.8 billion - 3Oct00
FMS case SBD - $1.2 billion - 31Dec92

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress:** 25 OCT 2005

POLICY JUSTIFICATION

Greece - F-16C/D Block 52+ Aircraft

The Government of Greece has requested a possible sale of

Major Defense Equipment (MDE)

40 F-16C/D Block 52+ aircraft with F100-PW-229 engines and APG-68(V)9 radars;
42 Joint Helmet Mounted Cueing Systems;
40 AN/AVS-9 Generation III Aviation Night Vision Goggles;
190 LAU-129/A Launchers;
48 Link-16 Multifunctional Information Distribution System-Low Volume Terminals (MIDS-LVT);
3 Link-16 Ground Stations;
10 LANTIRN Targeting pods;
11 Reconnaissance pods;
2 Reconnaissance Ground Stations;
40 APX-113 Advanced Identification Friend or Foe (IFF) systems;
43 AN/ALQ-187 Advanced Self-Protection Integrated Suites;
6 spare F100-PW-229 engines;
3 APG-68(V)9 spare radar sets;
4 AGM-154C Joint Standoff Weapons;
6 Joint Direct Attack Munitions (3 BLU-10 and 3 MK-84 bomb bodies);
4 Wind Compensated Munitions Dispenser;

Associated support equipment, software development/integration, modification kits, capability to employ a wide variety of munitions, spares and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability will also be provided. The estimated cost is $3.1 billion.

This proposed sale will contribute to the foreign policy and national security objectives of the United States (U.S.) by improving the military capabilities of Greece and enhancing weapon system standardization and interoperability with U.S. forces.

The Government of Greece needs these capabilities for mutual defense, regional security, modernization, U.S. and North Atlantic Treaty Organization (NATO) interoperability. The modernization of Greece's F-16 fleet will increase the effectiveness of its contribution and capabilities to future NATO, coalition, and anti-terrorism operations. This will also enhance Greece's ability to patrol the nation's

extensive coastline and borders against future threats, contribute to the Global War on Terrorism, and to NATO operations. This modernization will be provided in accordance with, and subject to the limitation on use and transfer provided under the Arms Export Control Act, as amended, and as embodied in the Letter of Offer and Acceptance.

This proposed sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus questions.

The principal contractors will be:

BAE Advanced Systems	**Greenlawn, New York**
Lockheed Martin Aeronautics Company	**Fort Worth Texas**
Lockheed Martin Missiles and Fire Control	**Orlando, Florida**
L3 Communications	**Arlington, Texas**
Boeing Corporation (McDonald Douglas Corporation)	**St. Louis, Missouri**
Raytheon Electronic Warfare Systems Company	**Goleta, California**
Raytheon Missile Systems	**Tucson, Arizona**
Northrop-Grumman Electro-Optical Systems	**Garland, Texas**
Northrop-Grumman Electronic Systems	**Baltimore, Maryland**
Pratt & Whitney United Technology Company	**East Hartford, Connecticut**

Offset agreements associated with this proposed sale are expected. They are undetermined at this time but will be defined in negotiations between the purchaser and contractors.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Greece.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 06-17

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. This proposed sale for the F-16C/D Block 52+ will involve the release of sensitive technology to Greece. The highest level of classified information required for release for training, operation, and maintenance is Secret. The F-16C/D Block 52+ aircraft will include the following classified or sensitive components and weapons:

a. The AN/APG-68(V)9 Radar Warning Receiver is the latest model of the APG-68 radar. This model contains the latest digital technology available for a mechanically scanned antenna, including higher processor power, higher transmission power, more sensitive receiver electronics, and an entirely new capability, Synthetic Aperture Radar (SAR), which creates higher-resolution ground maps from a much greater distance than previous versions of the APG-68. The upgrade features a 30% increase in detection range of air targets, a five-fold increase in processing speed, a ten-fold increase in memory, as well as significant improvements in all modes, jam resistance and false alarm rates. Complete hardware is classified Confidential; major components and subsystems are classified Confidential; software is classified Secret; and technical data and documentation are classified up to Secret.

b. The Joint Helmet Mounted Cueing System (JHMCS) is a modified HGU-55/P helmet that incorporates a visor-projected Heads-Up Display to cue weapons and aircraft sensors to air and ground targets. In close combat, a pilot must currently align the aircraft to shoot at a target. JHMCS allows the pilot to simply look at a target to shoot. This system projects visual targeting and aircraft performance information on the back of the helmet's visor, enabling the pilot to monitor this information without interrupting his field of view through the cockpit canopy, the system uses a magnetic transmitter unit fixed to the pilot's seat and a magnetic field probe mounted on the helmet to define helmet pointing positioning. A Helmet Vehicle Interface interacts with the aircraft system bus to provide signal generation for the helmet display. This provides significant improvement for close combat targeting and engagement. Hardware is Unclassified; technical data and documents are classified up to Secret.

c. The AN/AVS-9 Night Vision Goggles (NVG), a 3rd generation aviation device offers a higher resolution, high gain, and photo response to near infrared. Features include independent eye-span adjustment; 25-mm eye relief eyepieces which easily accommodate eyeglasses, and a low-profile battery pack. Minus-blue filter screens glare from cockpit instrument lighting; and a class B filter (available with some variants) can accommodate aircraft color displays. Other features include: low-distortion optics and automatic brightness control. The Night Vision Imaging System (NVIS) modification includes cockpit modifications to provide NVG-compatible cockpit lighting that optimizes NVG sensitivity, as well as external lighting capable of operating in a covert mode wherein only NVG-equipped personnel can see the aircraft external lighting. Hardware is Unclassified. Technical data and documentation to be provided is unclassified.

d. The Multifunctional Information Distribution System-Low Volume Terminal (MIDS-LVT) is an advanced Link-16 command, control, communications, and intelligence (C3I) system incorporating high-capacity, jam-resistant, digital communication links for exchange of near real-time tactical information, including both data and voice, among air, ground, and sea elements. MIDS-LVT is intended to support key theater functions such as surveillance, identification, air control, weapons engagement coordination, and direction for all services and allied forces. The system will provide jamming-resistant, wide-area communications on a Link-16 network among MIDS and Joint Tactical Information Distribution System equipped platforms. The MIDS-LVT and MIDS On Ship Terminal hardware, publications, operational capability, parameters, performance specifications, vulnerabilities to countermeasures, and software documentation are classified Confidential. The classified information to be provided consists of that which is necessary for the operation, maintenance, and repair (through intermediate level) of the data link terminal, installed systems, and related software.

e. The Joint Direct Attack Munitions (JDAM) is a guidance tail kit that converts unguided free-fall bombs into accurate, adverse weather "smart" munitions. With the addition of a new tail section that contains an inertial navigational system and a global positioning system guidance control unit, JDAM improves the accuracy of unguided, general-purpose bombs in any weather condition. JDAM can be launched from very low to very high altitudes in a dive, toss and loft, or in straight and level flight with an on-axis or off-axis delivery. JDAM enables multiple weapons to be directed against single or multiple targets on a single pass. The JDAM All-Up Round and all of its components are Unclassified; technical data for JDAM is classified up to Secret.

f. The APX-113 Combined Interrogator Transponder (CIT) system is already in operation with the Hellenic Air Force F-16s. The IFF transponders allow the F-16 to rapidly identify its own friendly aircraft from enemy or potentially hostile aircraft. The APX-113 is a "third-generation" system, enabling the user to upgrade to

new IFF capabilities such as Mode 5 using plug-in modules and updated software loads. The hardware is classified Secret.

g. The Wind Compensated Munitions Dispenser (WCMD) modifies existing inventories of CBU-87/89/97 by attaching an inertial guidance only (no Global Positioning System) tail kit to the bomb. These weapons are capable of delivery from medium to high altitude when equipped with a WCMD kit. The WCMD weapon corrects for wind effects and errors during the weapon's ballistic fall. The WCMD kit turns these "dumb" bombs into accurate "smart" weapons. Currently, the dispenser is achieving an accuracy of within 30 feet. F-16s are able to employ WCMD from a wide range of altitudes, in adverse weather, using various tactics such as level, dive, and toss bombing, and bombing on coordinates. The highest classification for the weapon is Secret.

h. The LANTIRN system consists of two externally carried pods. These are the AN/AAQ-13 navigation and the AN/AAQ-14 targeting pods. The AN/AAQ-13 navigation pod provides high-speed penetration and precision attack on tactical targets at night and in adverse weather. The navigation pod also contains a terrain-following radar and a fixed infrared sensor, which provides a visual cue and input to the aircraft's flight control system, enabling it to maintain a pre-selected altitude above the terrain and avoid obstacles. This sensor displays an infrared image of the terrain in front of the aircraft, to the pilot, on a head-up display. The navigation pod enables the pilot to fly along the general contour of the terrain at high speed, using mountains, valleys and the cover of darkness to avoid detection. The AN/AAQ-14 targeting pod contains a high-resolution, forward-looking infrared sensor (which displays an infrared image of the target to the pilot), a laser designator-rangefinder for precise delivery of laser-guided munitions, and software for automatic target tracking. For a laser-guided bomb, the pilot aims the laser designator, and the bomb guides to the target. For a conventional bomb, the pilot can use the laser to determine range, then the pod feeds the range data to the aircraft's fire control system. The designator is a four-digit PRF-coded laser that can designate for its own weapons or for other acquisition devices/munitions. These features simplify the functions of target detection and recognition and attack as well as permitting pilots of single-seat fighters to attack targets with precision-guided weapons on a single pass. The hardware is Unclassified but the technical data and documents may be classified up to Secret.

i. The ASPIS II is a complete integrated electronic warfare (EW) suite consisting of the ALR-93(V) threat warning system, ALQ-187 jammer, and ALE-47 chaff/flare dispenser. The ALR-93(V) Radar Warning Receiver (RWR) and EW Suite Controller is a computer controlled RWR that provides automatic detection and display of RF signals. The ALQ-187 is a self-protect electronic countermeasures system. It is fully automatic with internally housed radar warning and chaff/flare systems. It detects and defends the aircraft from surface-to-air missiles, anti-aircraft artillery, and air-to-air missiles. The ALE-47 Counter Measures Dispenser System

provides an integrated, reprogrammable, computer controlled system to dispense expendables/decoys to enhance aircraft survivability. ALE-47 provides the aircrew with a "smart" countermeasures dispensing system, allowing the aircrew to optimize the countermeasures employed against anti-aircraft threats. The hardware and the Technical data/documents are classified up to Secret.

j. There are three Reconnaissance pod options for the Greek Air Force. The first is a Recon-Optical, Incorporated produced pod called SHARP (Shared Reconnaissance Pod). The second is produced by BF Goodrich, called the DB-110. Lastly, BAE produces the TARS pod. Both the DB-110 and TARS are integrated for immediate F-16 use. The Hellenic Air Force will be presented with specifics on each pod and will subsequently choose the equipment at a later date.

k. The AGM-154 Joint Standoff Weapon (JSOW) is a low cost, launch and leave, air launched standoff weapon that provides aircraft with a capability to attack well defended targets in day, night, and less-than-ideal weather conditions. The AGM-154C JSOW incorporates component, software, and technical design information that are considered sensitive. The following JSOW components being conveyed by the proposed sale that are considered sensitive and may be classified up to Confidential include:

a. global positioning system/inertial navigation system
b. imaging infrared seeker
c. operation flight program software
d. missile operational characteristics and performance data

These elements are essential to the ability of the JSOW missile to selectively engage hostile targets under a wide range of operational, tactical and environmental conditions.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software source code in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of systems with similar or advance capabilities.

CERTIFICATION PURSUANT TO § 620C(d) OF THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED

Pursuant to § 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 and State Department Delegation of Authority No. 145, I hereby certify that the sale of defense articles and defense services, to include 40 F-16C/D Block 52+ aircraft with F100-PW-229 engines and APG-68(V)9 radars, 42 Joint Helmet Mounted Cueing Systems, 40 AN/AVS-9 Generation III Aviation Night Vision Goggles, 190 LAU-129/A Launchers, 48 Link-16 Multifunctional Information Distribution System-Low Volume Terminals (MIDS-LVT), 3 Link-16 Ground Stations, 10 LANTIRN Targeting pods, 11 Reconnaissance pods, 2 Reconnaissance Ground Stations, 40 APX-113 Advanced Identification Friend or Foe (IFF) systems, 43 AN/ALQ-187 Advanced Self-Protection Integrated Suites, 6 spare F100-PW-229 engines, 3 APG-68(V)9 spare radar sets, 4 AGM-154C Joint Standoff Weapons, 6 Joint Direct Attack Munitions (3 BLU-10 and 3 MK-84 bomb bodies), 4 Wind Compensated Munitions Dispenser, associated support equipment, software development/integration, modification kits, capability to employ a wide variety of munitions, spares and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability, to the Government of Greece is consistent with the principles set forth in § 620C(b) of the Act.

This certification will be made part of the notification to Congress in accordance with § 36(b) of the Arms Export Control Act, as amended, regarding the proposed sale of the above-named articles and services and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

Robert Joseph
Under Secretary of State
for Arms Control and
International Security

[FR Doc. 05–21782 Filed 11–1–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0154]

Federal Acquisition Regulation; Information Collection; Davis Bacon Act—Price Adjustment (Actual Method)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the Davis-Bacon Act price adjustment (actual method). The clearance currently expires on March 31, 2006.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 3, 2006.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT Kimberly Marshall, Contract Policy Division, GSA, (202) 219–0986.

SUPPLEMENTARY INFORMATION:

A. Purpose

The clause at 52.222–32, Davis-Bacon Act—Price Adjustment (Actual Method), requires that a contractor must submit at the exercise of each option to extend the term of the contract, a statement of the amount claimed for incorporation of the most current wage determination by the Department of Labor, and any relevant supporting data, including payroll records, that the contracting officer may reasonably require.

The contracting officer may include this clause in fixed-price solicitations and contracts, subject to the Davis-Bacon Act, that will contain option provisions to extend the term of the contract and the Contracting Officer determines the most appropriate method to establish contract price is the method at 22.404–12(c)(4). Generally, this method is only appropriate if contract requirements are predominantly services subject to the Service Contract Act and the construction requirements are substantial and segregable.

B. Annual Reporting Burden

Respondents: 900.
Responses Per Respondent: 1.
Annual Responses: 900.
Hours Per Response: 90.
Total Burden Hours: 81,000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0154, Davis-Bacon Act—Price Adjustment (Actual Method), in all correspondence.

Dated: October 20, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

[FR Doc. 05–21787 Filed 11–1–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Uniform Formulary Beneficiary Advisory Panel

AGENCY: Department of Defense, Assistant Secretary of Defense (Health Affairs).

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Uniform Formulary Beneficiary Advisory Panel. The panel will review and comment on recommendations made to the Director, TRICARE Management Activity, by the Pharmacy and Therapeutics Committee regarding the Uniform Formulary. The meeting will be open to the public. Seating is limited and will be provided only to the first 220 people signing in. All persons must sign in legibly. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: Friday, December 16, 2005, from 8 a.m. to 4 p.m.

ADDRESSES: Naval Heritage Center Theater, 701 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Rich Martel, TRICARE Management Activity, Pharmacy Operations, Beneficiary Advisory Panel, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041, telephone (703) 681–0064 ext. 3672, fax (703) 681–1242,or e-mail at *richard.martel.ctr@tma.osd.mil.*

SUPPLEMENTARY INFORMATION: The Uniform Formulary Beneficiary Advisory Panel will only review and comment on the development of the Uniform Formulary as reflected in the recommendations of the DoD Pharmacy and Therapeutics (P&T) Committee coming out of that body's meeting in November 2005. The P&T Committee information and subject matter concerning drug classes reviewed for that meeting are available at *http://pec.ha.osd.mil.* Any private citizen is permitted to file a written statement with the advisory panel. Statements must be submitted electronically to *richard.martel.ctr@tma.osd.mil* no later than December 9, 2005. Any private citizen is permitted to speak at the Beneficiary Advisory Panel meeting, time permitting. One hour will be reserved for public comments, and speaking times will be assigned only to the first twelve citizens to sign up at the meeting, on a first-come, first-served basis. The amount of time allocated to a speaker will not exceed five minutes.

Dated: October 26, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 05–21780 Filed 11–1–05; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 2, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 27, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: IEA Progress in International Reading Literacy Study—2006 Full Scale Study.

Frequency: One time.

Affected Public: Individuals or household; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 5,500.

Burden Hours: 2,980.

Abstract: PIRLS 2006 is a multi-national project coordinated by the International Association for the Evaluation of Educational Achievement. Approximately 46 countries will participate in this analysis of children's reading literacy and the factors associated with reading acquisition. Children in grade 4 in the U.S. will be administered a reading test and the children, their teachers, and school administrators will also complete questionnaires about factors related to the development of reading literacy.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2910. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at *Katrina.Ingalls@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–21809 Filed 11–1–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by December 2, 2005.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: October 31, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Annual State Application Under Part B of the IDEA as Amended in 2004.

Abstract: The Individuals with Disabilities Education Improvement Act of 2004, signed on December 3, 2004, became Pub. L. 108–446. In accordance with 20 U.S.C. 1412(a) a State is eligible for assistance under part B for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the conditions found in 20 U.S.C. 1412. Information Collection 1820–0030 is being revised so that a State can provide assurances that it either has or does not have in effect policies and procedures to meet the eligibility requirements of part B of the Act as found in Pub. L. 108–446.

Additional Information: In accordance with 20 U.S.C. 1412(a) and 300.100 of proposed regulations, a State is eligible for assistance under Part B for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the conditions found in 20 U.S.C. 1412 and proposed 300.101 through 300.176 and the requirements at 300.182 and 300.804.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 456.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2928. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–21970 Filed 11–1–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by November 29, 2005.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: October 31, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Annual State Application Under Part C of the IDEA as Amended in 2004.

Abstract: The Individuals with Disabilities Education Improvement Act of 2004, signed on December 3, 2004, became Pub. L. 108–446. In order to be eligible for a grant under 20 U.S.C. 1433, a State shall provide assurance to the Secretary that the State has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State, infants and toddlers with disabilities who are homeless children and their families, and has in effect a statewide system that meets the requirements of 20 U.S.C. 1435. Information Collection 1820–0550 is being revised so that a State can provide assurances that it either has or does not have in effect policies, procedures, methods, descriptions, and assurances that meet the application requirements of part C of the Act as found in Pub. L. 108–446.

Additional Information: In order to be eligible for a grant under 20 U.S.C. 1433, a State must provide assurance to the Secretary that the State has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State, infants and toddlers with disabilities who are homeless children and their families, and has in effect a statewide system that meets the requirements of 20 U.S.C. 1435.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 560.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2927. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–21971 Filed 11–1–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Research Misconduct

AGENCY: Department of Education.

ACTION: Notice of policy on research misconduct.

SUMMARY: The United States Department of Education (Department) announces the establishment of a policy regarding research misconduct (Department's Policy). The Department's Policy implements the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 FR 76260).

EFFECTIVE DATE: The Department's Policy is effective December 2, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Wolff, U.S. Department of Education, 555 New Jersey Avenue, NW., room 508C, Washington, DC 20208–5643. Telephone: (202) 219–2067 or by e-mail: *Brenda.Wolff@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION:

Statement of Department of Education Policy Regarding Research Misconduct

The Department recognizes the significant threat that research misconduct poses to the integrity, accuracy, and reliability of research funded by the Federal Government, including research funded by the Department. As an agency that provides funding for research, the Department is aware of the importance of establishing throughout the Government uniform policies and guidelines, to the extent practicable, as called for in the Federal Policy.

The Federal Policy seeks to establish uniformity among Federal agencies in several key areas including the adoption of common definitions of research misconduct and related terms, as well as the establishment of uniform criteria for determining a finding of research misconduct (65 FR 76260, 76262, and 76263). In addition, the Federal Policy recommends that Federal agencies adhere to certain common policies and procedures in applying their respective research misconduct policies, including establishing guidelines to ensure fair and timely procedures for responding to allegations of research misconduct. The Federal Policy also provides guidance to assist Federal agencies in determining the appropriate sanctions for research misconduct.

The Department has determined that the best method of fulfilling its obligation is to establish a policy that (1) adopts the Federal Policy and (2) within the framework of regulations governing research funded by the Department, applies the common definitions and criteria for responding to allegations of research misconduct.

Adoption of Common Definitions

The Department adopts, and applies to research funded by it, the definition of research misconduct in the Federal Policy (65 FR 76260 and 76262). Accordingly, the Department applies the following definitions:

Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research or in reporting research results. However, the term does not include honest error or differences of opinion.

Fabrication means making up data or results and recording or reporting them.

Falsification means manipulating research materials, equipment, or processes, or changing or omitting data or results so that the research is not accurately represented in the research record.

Plagiarism means appropriating another person's ideas, processes, results, or words without giving proper credit.

Consistent with the Federal Policy, the definition of *research* for purposes of the Department's Policy includes all basic, applied, and demonstration research in all fields, as more fully described in the Federal Policy (65 FR 76260 and 76263). The definition of *research record* as used in the Department's Policy is identical to the definition used in the Federal Policy (65 FR 76260 and 76263).

Adoption of Common Standards for the Purpose of Finding Research Misconduct

As stated in the Federal Policy, the Department considers that research misconduct has occurred if (1) there is a significant departure from the accepted practices of the relevant research community; (2) the misconduct occurs as the result of an intentional act or a knowingly or recklessly committed act; and (3) the allegation is proven by a preponderance of evidence.

General Responsibilities of the Department and Research Institutions

The Federal Policy describes, in general terms, the responsibilities that Federal agencies and research institutions share in responding to research misconduct. For purposes of the Department's Policy, the Department has adopted the Federal Policy's definition of *research institution* (65 FR 76260 and 76263). Thus, this term includes all organizations, regardless of size, using Department funds for research, including intramural research conducted for the Department by employees and contractors.

To the extent that the responsibilities of the Department and research

institutions described in the Federal Policy are consistent with the Department's regulations and Federal law, the Department's Policy, elsewhere in this document, cites specific provisions that more fully describe the rights and responsibilities articulated in the Federal Policy. However, the Department's Policy is not controlling if it is inconsistent with Federal law, the Department's regulations, or the terms and conditions of any funding arrangement entered into by the Department.

A research institution that has internal policies and procedures for responding to allegations of research misconduct may continue to rely on those procedures if appropriate. The Department's Policy does not require a research institution that lacks these types of formal internal policies and procedures to establish them. However, the absence of an internal process does not lessen the importance of an institution's self-policing in the administration of research funded by the Department. Any research institution that wishes to establish formal internal policies and procedures should refer to the Federal Policy's guidance.

The Federal Policy requires a research institution to notify the funding agency (or agencies in some cases) of an allegation of research misconduct if (1) the allegation involves Federally funded research (or an application for Federal funding) and meets the Federal definition of research misconduct, and (2) if the institution's inquiry into the allegation determines there is sufficient evidence to proceed to an investigation. The Federal Policy also obligates a research institution to immediately notify a Federal agency if public health or safety is at risk, if agency interests or resources are threatened, if research should be suspended, or if there is a reasonable indication of possible civil or criminal violations. Additionally, the Federal Policy requires a research institution to notify a Federal agency if Federal action is required to protect the interests of those involved in the investigation or in situations in which the premature release of information related to an investigation into research misconduct requires possible Federal intervention to safeguard evidence and protect the rights of those involved (65 FR 76260 and 76263). The Department adopts the Federal Policy with regard to obligatory notification by research institutions and applies the Federal Policy to research institutions receiving funding from the Department.

The Department's oversight responsibilities typically reside in the Principal Office (PO) responsible for making a research grant or awarding a research contract. Additional oversight responsibility lies with the Department's Office of Inspector General (OIG).

OIG has independent authority to investigate a research institution's use of Department funds, as well as to conduct investigations related to waste, fraud, and abuse in programs funded by the Department. Anyone wishing to report alleged research misconduct may use the same hotline established by OIG for persons wishing to provide information concerning waste, fraud, and abuse. The telephone number for this hotline is 1–800–MIS–USED; the e-mail address is *oig.hotline@ed.gov.* An individual making a report may choose to remain anonymous.

General Guidelines for Establishing Fair and Timely Procedures

The Federal Policy provides general guidance to assist research institutions in developing fair and timely procedures for responding to allegations of research misconduct (65 FR 76260 and 76263). The guidelines are designed to provide safeguards for informants, as well as for persons alleged to have committed research misconduct. The guidelines address the importance of objectivity and expertise among those within a research institution tasked with reviewing allegations of misconduct.

Department Regulations Governing Research Misconduct

It is the Department's Policy to pursue vigorously all allegations of misconduct involving research funded by the Department. While it is beyond the scope of the Department's Policy to reference every Federal statute and regulation that could conceivably be used by the Department or another agency of the Government in responding to allegations of research misconduct, reference is made in the following sections of this notice to several specific regulations applicable to research misconduct. Research institutions that receive Department funds through grants or contracts are also subject to the specific provisions of the grant arrangement or contract, as applicable.

1. *Grants and Cooperative Agreements.* A research institution that receives a grant or cooperative agreement from the Department to conduct research is subject to the provisions of the Education Department General Administrative Regulations (EDGAR). See generally 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98 and 99.

These regulations describe various remedies available to the Department, including the temporary withholding of cash payments, the disallowance of costs, and suspension or termination of the award (see 34 CFR part 74, subpart C, and part 75, subpart G). EDGAR also includes provisions related to hearings and appeals.

The Department may also initiate a suspension or debarment action against a research institution, notwithstanding the imposition of any other enforcement action. The regulations governing suspensions and debarments for non-procurement matters, including rights of hearing and appeal, are in 34 CFR part 85. Specifically, under 34 CFR 85.305, the commission of fraud, forgery, or falsification is grounds for suspension or debarment.

2. *Contracts.* A research institution that enters into a contract with the Department is subject to the provisions of the Federal Acquisition Regulations (FAR). See generally 48 CFR parts 3400 through 3499. General provisions available to the Department to address instances of research misconduct under contracts are in 48 CFR part 52. Additionally with regard to contracts, the Department may initiate a debarment or suspension action under 48 CFR 9.406 and 9.407.

Research Misconduct Involving Department Employees

The Department's Policy applies to employees of the Department, each of whom is subject to standards of conduct that apply to research conducted within the Department. Federal regulations require an employee to (1) put forth an honest effort in his or her work; and (2) protect and conserve Federal property and only use that property in authorized ways (5 CFR 2635.101(b)(5) and (6)). Additionally, an employee must disclose instances of fraud, waste, abuse, and corruption (5 CFR 2635.101(b)(11)).

As indicated in the Department's Personnel Manual Instruction (PMI), possible sanctions for employee misconduct in research may include suspension or termination from Federal employment (PMI 751–1, Table of Penalties, item 24). An employee's supervisor has initial responsibility for responding to employee research misconduct. To assist supervisors in administering an appropriate remedy, the Merit Systems Protection Board has established 12 criteria, commonly referred to as the ''Douglas Factors,'' used in determining the appropriate penalty. See *Douglas* v. *Veterans Administration*, 5 Merit Systems Protection Board 313 (1981).

An employee who faces disciplinary proceedings has available a number of established procedures providing for the employee's rights to appeal or otherwise challenge a disciplinary matter. These may include rights under the Merit Systems Protection Board regulations, Equal Employment Opportunity Commission (EEOC) regulations, and grievance procedures.

Additional Considerations

The authority and responsibility for responding to allegations and instances of research misconduct in the Department's programs are shared among a wide variety of offices within the Department. The procedures described in this notice for investigating, adjudicating, and punishing instances of research misconduct are general in nature. Therefore, it is the Department's Policy to pursue not only the remedies described in this notice, but, also all legal remedies available to the Department and other Federal agencies in responding to instances of research misconduct.

Thus, while the Department's Policy is intended to comply with the Federal Policy, it is not intended to create, waive, amend, or otherwise abrogate any statutory or regulatory right that may otherwise exist or come into existence concerning the subject of research misconduct.

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To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: October 27, 2005.

Margaret Spellings,

Secretary of Education.

[FR Doc. 05–21874 Filed 11–1–05; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–4–000]

Acadia Power Partners, LLC; Cleco Power LLC; Cleco Evangeline LLC; Perryville Energy Partners, LLC; Notice of Institution of Proceeding and Refund Effective Date

October 25, 2005.

On October 21, 2005, the Commission issued an order that instituted a proceeding in Docket No. EL06–4–000, pursuant to section 206 of the Federal Power Act (FPA) 16 U.S.C. 824e, to examine the justness and reasonableness of the Cleco Companies' [1] market-based rates for the City of Lafayette Power Authority and the Louisiana Energy and Power Authority control areas. *Acadia Power Partners, LLC, et al.*, 113 FERC ¶ 61,073 (2005).

The refund effective date in Docket No. EL06–4–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6034 Filed 11–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–40–000]

East Tennessee Natural Gas, LLC; Notice of Proposed Changes in FERC Gas Tariff

October 21, 2005.

Take notice that on October 18, 2005, East Tennessee Natural Gas, LLC (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, a proposed Fourth Revised Sheet No. 394, to designate a service agreement with Ariana Energy, LLC under Rate Schedule FT–A (the Agreement) as a non-conforming agreement. East Tennessee requests that the Commission accept the proposed tariff sheet, effective November 18, 2005.

East Tennessee states that it is also submitting the Agreement to comply with the Commission's regulations regarding the filing of non-conforming agreements. East Tennessee requests such waivers of the Commission's regulations as may be necessary for the Agreement to be made effective on December 1, 2003.

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. E5–6040 Filed 11–1–05; 8:45 am]

BILLING CODE 6717–01–P

[1] Cleco Power LLC, Cleco Evangeline LLC, Perryville Energy Partners, LLC and Acadia Power Partners LLC.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. AI05–1–000 and AC06–5–000]

Jurisdictional Public Utilities and Licensees; Natural Gas Companies Oil Pipeline Companies; El Paso Natural Gas Company; Notice of Accounting Assessment Costs

October 21, 2005.

Take notice that on October 19, 2005, El Paso Natural Gas Company (El Paso) tendered for filing a request for approval by the Chief Accountant to adopt the provisions of the June 30, 2005 Order under Docket No. AI05–1–00, effective December 1, 2005.[1]

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 date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time October 28, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6031 Filed 11–1–05; 8:45 am]

BILLING CODE 6717–01–P

[1] *Jurisdictional Public Utilities and Licensees, Natural Gas Companies, Oil Pipeline Companies,* 111 FERC ¶ 61,501 (2005).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–10–000 and EY06–4–000]

Standards of Conduct for Transmission Providers; Enbridge Inc. and Enbridge Energy Partners, L.P.; Notice Granting Waiver of Recordkeeping Requirements

October 24, 2005.

On October 18, 2005, Enbridge Inc. and Enbridge Energy Partners, L.P. (collectively, Enbridge), on behalf of certain of their respective Offshore Pipelines,[1] filed to seek a temporary emergency waiver of section 358.4(a)(2) of the Commission's regulations and for any other waivers necessary for Enbridge to proceed with the restoration work on its Offshore Pipelines. Enbridge requests that the waivers begin October 7, 2005 and continue until the earlier of the end of the gas day on March 31, 2006 (the last day of the 2005–2006 winter heating season) or the date on which the throughput expected for the particular pipeline is fully restored. Effective on the date of this notice, the Commission will grant each of the Enbridge Offshore Pipelines a waiver of the otherwise applicable requirements of section 358.4(a)(2) to record a log of emergency-related deviations from the Standards of Conduct and to post these deviations on their Web sites; this extension will expire individually for each pipeline on the earlier of when that pipeline has completed its hurricane-related repairs and is ready to return to service, or January 13, 2006.

Enbridge explains that, in the area impacted by Hurricanes Katrina and Rita, the Offshore Pipelines are either off-line entirely or are continuing to experience throughput that is substantially lower than the throughput projected for these pipelines prior to the hurricanes.[2] Enbridge explains further, that, as a result of the substantial damage caused to the energy infrastructure in the Gulf Coast area, the Offshore Pipelines are suffering emergencies affecting their systems' reliability. Enbridge states that it is necessary for the Offshore Pipeline employees who are assisting in the restoration efforts to communicate with other Enbridge employees and with third-party employees about the status of the restoration efforts and to coordinate joint operations and repair work, without regard to their designation under the Standards of Conduct. Enbridge states that the requirement to log each individual deviation would be burdensome and would complicate the Offshore Pipelines' restoration efforts. Enbridge notes that its waiver is limited to those employees involved in the ongoing restoration efforts and the communications required in connection with that effort. Enbridge states that the affected employees will observe the no-conduit requirement in the Standards of Conduct.

Due to the emergency conditions in Louisiana and Texas created by Hurricane Rita, on September 23, 2005, the Commission issued a notice that, among other things, allowed affected transmission providers to delay, until October 7, 2005, compliance with the requirement of section 358.4(a)(2) of the Commission's regulations, 18 CFR 358.4(a)(2) (2005), to report to the Commission and post on the OASIS or Internet Web site, as applicable, each emergency that resulted in any deviation from the Standards of Conduct.[3] Due to the extreme nature of the emergency, the Commission also waived, until October 7, 2005, the requirements to record and retain a record of each deviation of the Standards of Conduct.[4] The notice added that the Commission would consider extending the waiver if it continued to be needed after October 7, 2005. The Commission had previously granted similar waivers due to Hurricane Katrina.[5]

[1] Enbridge is filing on behalf of Enbridge Offshore Pipelines (UTOS) L.L.C. Enbridge Energy Partners, L.P. is filing on behalf of Garden Banks Gas Pipeline, LLC, Mississippi Canyon Gas Pipeline, LLC, Nautilus Pipeline Company, L.L.C. and Stingray Pipeline Company, L.L.C. (collectively, Offshore Pipelines).

[2] Enbridge states that the Offshore *Pipelines* are currently experiencing approximately 1,315,000 Dth/d in decreased throughput due to hurricane-related damage along the Gulf Coast and in the Gulf of Mexico.

[3] Notice Granting Extension of Time To Comply With Posting and Other Requirements, *Standards of Conduct for Transmission Providers,* Docket Nos. EY05–20–000, *et al.* (September 23, 2005).

[4] *Id.*

[5] Notice Granting Extension of Time To Comply With Posting and Other Requirements, *Standards of Conduct for Transmission Providers,* Docket Nos. EY05–14–000, *et al.* (August 31, 2005); Notice Waiving Record Keeping Requirements, *Standards*

Based on available information regarding the expected restoration dates for Enbridge's pipeline operations, the Commission grants Enbridge a waiver of the recording and posting requirements of section 358.4(a)(2) of the Commission's regulations under these emergency circumstances effective on the date of this notice until the earlier of January 13, 2006, or the date on which each individual offshore pipeline's hurricane-related repairs are completed and that pipeline is ready to return to service, without prejudice to Enbridge requesting a further extension, if necessary.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6038 Filed 11–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–503–002]

Equitrans, L.P.; Notice of Compliance Filing

October 21, 2005.

Take notice that on October 18, 2005, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, proposed to become effective on September 1, 2005:

Second Substitute Sixth Revised Sheet No. 308

Second Substitute Third Revised Sheet No. 309

Equitrans states the filing is being made in compliance with the Commission's unpublished Letter Order issued October 4, 2005, at Docket No. RP05–503–001.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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. E5–6039 Filed 11–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–7–000]

Metropolitan Life Insurance Company; Notice of Filing

October 21, 2005.

Take notice that on October 19, 2005, Metropolitan Life Insurance Company (MetLife) filed a petition for declaratory order requesting that the Commission find that MetLife is not a public utility under the Federal Power Act as a result of the transaction authorized by the Commission in Docket No. EC05–87–000. MetLife states that it has served its petition on the official service list compiled in Docket No. EC05–87–000.

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. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive 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 November 18, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6036 Filed 11–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–230–019]

New York Independent System Operator, Inc.; Notice of Compliance Filing

October 21, 2005.

Take notice that on October 3, 2005, the New York Independent System Operator, Inc. (NYISO) tendered for filing a report on stakeholders process and cost-benefit analysis to supplement is June 1, 2005 compliance filing made in response to the Commission's July 13, 2005 Letter Order.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion

of Conduct for Transmission Providers, Docket Nos. EY05–14–001, *et al.* (September 7, 2005).

to intervene or protest must serve a copy of that document on the Applicant and all the 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 ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 2, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6037 Filed 11–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–60–001]

PJM Interconnection, L.L.C.; Notice of Compliance Filing

October 21, 2005.

Take notice that on October 17, 2005, PMJ Interconnection, L.L.C. (PJM) tendered for filing revisions to the PJM Open Access Transmission Tariff in compliance with the Commission's September 15, 2005 Order in the above 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, 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 the 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 ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 16, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6033 Filed 11–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–480–017]

Texas Eastern Transmission, LP; Notice of Negotiated Rate

October 21, 2005.

Take notice that on October 19, 2005, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to be effective November 1, 2005:

Original Sheet No. 114
Original Sheet No. 115
Original Sheet No. 116
Sheet Nos. 117–125

Texas Eastern states that the proposed tariff sheets include footnotes where necessary to provide further details on the transactions listed thereon.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested 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. E5–6030 Filed 11–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–6–000]

Western Farmers Electric Cooperative on Behalf of Itself and Its Members: Alfalfa Electric Cooperative, Caddo Electric Cooperative, Canadian Valley Electric Cooperative, Choctaw Electric Cooperative, Cimarron Electric Cooperative, Cotton Electric Cooperative, East Central Oklahoma Electric Cooperative, Harmon Electric Association, Kay Electric Cooperative, Kiamichi Electric Cooperative, Kiwash Electric Cooperative, Northfork Electric Cooperative, Northwestern Electric Cooperative, Oklahoma Electric Cooperative, Red River Valley Rural Electric Association, Rural Electric Cooperative, Southeastern Electric Cooperative, and Southwest Rural Electric Association; Notice of Filing

October 21, 2005.

Take notice that on October 19, 2005, Western Farmers Electric Cooperative, on behalf of itself and certain of its electric distribution cooperative member-owners, filed a request for partial waiver of certain regulations of the Commission concerning sales to and purchases from qualifying facilities.

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. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive 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 November 9, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6035 Filed 11–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Independent Energy Producers Association, Complainant v. California Independent System Operator Corporation, Respondent; Notice of Technical Conference

October 25, 2005.

The Federal Energy Regulatory Commission Staff is convening a technical conference to discuss the issues raised in the above referenced complaint submitted by the Independent Energy Producers Association (IEP) against the California Independent System Operator Corporation (CAISO). Specifically, the conference will address issues related to the continuation of the CAISO's existing must-offer obligation, details of any alternatives, such as the reliability capacity service tariff proposed by IEP, and related implementation issues.

The technical conference will be held on Tuesday, November 8, 2005 and Wednesday, November 9, 2005, if necessary, from 9:30 a.m. to 5 p.m., EST, at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The conference is open for the public to attend, and registration is not required. For more information about the conference, please contact: Olga Kolotushkina at (202) 502–6024 or *olga.kolotushkina@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6032 Filed 11–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD05–13–000]

Joint Boards on Security Constrained Economic Dispatch; Second Notice on Initial Joint Board Meetings

October 21, 2005.

In accordance with the Commission's September 30, 2005 order,[1] and pursuant to section 223(b)[2] and section 209(a)[3] of the Federal Power Act, take notice that the attachment lists the State representatives that have been appointed to the joint boards for the South, West, Northeast and PJM/MISO regions. Pursuant to FPA section 223(b), the Commission requested each State to nominate a representative to the appropriate joint board, and pursuant to FPA section 209(a), such persons have been appointed to the appropriate joint board. Also, FPA section 223(b) required the Commission to designate a member of the Commission to chair and participate as a member of each such board. Accordingly, the attached list identifies the member of the Commission that will chair each board as well as the State representatives that will act as the vice-chairs for each board.

For more information about this notice, please contact Sarah McKinley at 202–502–8004 or *sarah.mckinley@ferc.gov.*

Magalie R. Salas,

Secretary.

Attachment: Members of Joint Boards

South Joint Board

Chair: Chairman Joseph T. Kelliher, Federal Energy Regulatory Commission.
Vice Chair: Commissioner Michael Callahan, Mississippi Public Service Commission.
Members:
President Jim Sullivan, Alabama Public Service Commission.
Chairman Sandra L. Hochstetter, Arkansas Public Service Commission.
Commissioner J. Terry Deason, Florida Public Service Commission.
Ms. Pandora Epps, Internal Consultant, Georgia Public Service Commission.
Chair Brian J. Moline, Kansas Corporation Commission.
Commissioner James M. Field, Louisiana Public Service Commission.
Commissioner Steve Gaw, Missouri Public Service Commission.

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[1] Joint Boards on Security Constrained Economic Dispatch, 112 FERC ¶ 61,353 at P 10–12 (2005).

[2] Section 223 was added to the Federal Power Act, 16 U.S.C. 824 *et seq.* (2000), by section 1298 of the Energy Policy Act of 2005, Pub. L. No. 109–58, § 1298, 119 Stat. 594, 986 (2005).

[3] 16 U.S.C. 824h(a).

Commissioner E. Shirley Baca, New Mexico Public Regulation Commission.
Commissioner Sam J. Ervin, IV, North Carolina Utilities Commission.
Chairman Jeff Cloud, Oklahoma Corporation Commission.
Vice Chairman G. O'Neal Hamilton, South Carolina Public Service Commission.
Director Pat Miller, Tennessee Regulatory Authority.
Commissioner Julie Caruthers Parsley, Public Utility Commission of Texas.

West Joint Board

Chair: Commissioner Suedeen Kelly, Federal Energy Regulatory Commission.
Vice Chair: Commissioner Marsha H. Smith, Idaho Public Utilities Commission.
Members:
Commissioner Marc Spitzer, Arizona Corporation Commission.
Commissioner Dian M. Grueneich, California Public Utilities Commission.
Chairman Gregory Sopkin, Colorado Public Utilities Commission.
Commissioner Thomas J. Schneider, Montana Public Service Commission.
Mr. Richard L. Hinckley, Esq., General Counsel, Public Utilities Commission of Nevada.
Commissioner E. Shirley Baca, New Mexico Public Regulation Commission.
Chairman Lee Beyer, Oregon Public Utility Commission.
Ms. Rolayne Ailts Wiest, General Counsel, South Dakota Public Utilities Commission.
Chairman Paul Hudson, Public Utility Commission of Texas.
Chairman Ric Campbell, Utah Public Service Commission.
Chairman Mark Sidran, Washington Utilities and Transportation Commission.
Deputy Chair Kathleen A. ''Cindy'' Lewis, Wyoming Public Service Commission.

Northeast Joint Board

Chair: Commissioner Nora Mead Brownell, Federal Energy Regulatory Commission.
Vice Chair: Chairman Paul G. Afonso, Massachusetts Department of Telecommunications and Energy.
Vice Chair: Chairman William M. Flynn, New York State Public Service Commission.
Members:
Commissioner Jack R. Goldberg, Connecticut Department of Public Utility Control.
Chairman Kurt Adams, Maine Public Utilities Commission.
Chairman Thomas B. Getz, New Hampshire Public Utilities Commission.
Chairman Elia Germani, Rhode Island Public Utilities Commission.
Chairman James Volz, Vermont Public Service Board.

PJM/MISO Joint Board

Chair: Commissioner Nora Mead Brownell, Federal Energy Regulatory Commission.
Vice Chair: Commissioner Kevin K. Wright, Illinois Commerce Commission.
Vice Chair: Chairman Kenneth D. Schisler, Maryland Public Service Commission.
Members:
Commissioner Dallas Winslow, Delaware Public Service Commission.
Chair Agnes A. Yates, District of Columbia Public Service Commission.
Chairman David Lott Hardy, Indiana Utility Regulatory Commission.
Chairman John Norris, Iowa Utilities Board.
Chairman Mark David Goss, Kentucky Public Service Commission.
Commissioner Laura Chappelle, Michigan Public Service Commission.
Commissioner Kenneth Nickolai, Minnesota Public Utilities Commission.
Chairman Jeff Davis, Missouri Public Service Commission.
Chairman Greg Jergeson, Montana Public Service Commission.
Mr. Paul Malone, Regulatory, Planning & Contracts Manager, Nebraska Public Power District.
Commissioner Frederick F. Butler, New Jersey Board of Public Utilities.
Commissioner Sam J. Ervin IV, North Carolina Utilities Commission.
Commissioner Susan E. Wefald, North Dakota Public Service Commission.
Chairman Alan R. Schriber, Public Utilities Commission of Ohio.
Chairman Wendell F. Holland, Pennsylvania Public Utility Commission.
Chairman Gary W. Hanson, South Dakota Public Utilities Commission.
Director Pat Miller, Tennessee Regulatory Authority.
Mr. Howard Spinner, Director, Division of Economics and Finance, Virginia State Corporation Commission.
Mr. Earl Melton, Director, Engineering Division, Public Service Commission of West Virginia.
Chairperson Daniel R. Ebert, Public Service Commission of Wisconsin.

[FR Doc. E5–6041 Filed 11–1–05; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL06–1–000]

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly; Enforcement of Statutes, Orders, Rules, and Regulations; Policy Statement on Enforcement

Issued October 20, 2005.

1. The Commission issues this Policy Statement to provide guidance and regulatory certainty regarding our enforcement of the statutes, orders, rules, and regulations we administer. The Policy Statement discusses the factors we will take into account in determining remedies for violations, including applying the enhanced civil penalty authority provided by the Energy Policy Act of 2005 (EPAct 2005).[1] Our purpose is to provide firm but fair enforcement of our rules and regulations and to place entities subject to our jurisdiction on notice of the consequences of violating the statutes, orders, rules, and regulations we enforce.

2. In discussing the factors we will take into account in determining the severity of penalties to be imposed for violations, we also recognize the importance of demonstrable compliance and cooperation efforts by utilities, natural gas companies, and other entities subject to the statutes, orders, rules, and regulations administered by the Commission. We encourage regulated entities to have comprehensive compliance programs, to develop a culture of compliance within their organizations, and to self-report and cooperate with the Commission in the event violations occur.[2]

3. Contemporaneously herewith, we are issuing a Notice of Proposed Rulemaking in Docket No. RM06–3–000 (published in the **Federal Register** October 27, 2005 (70 FR 61930)), proposing new regulations to implement sections 315 and 1283 of EPAct 2005. The proposed regulations would make it unlawful for any entity to use or employ any device, scheme, or artifice to defraud, or to make any untrue statement of a material fact or to omit to state a material fact, or to engage in a fraud or deceit in connection with the purchase or sale of electricity, natural gas, or related transmission or transportation services subject to the jurisdiction of the Commission. The proposed regulations will provide another basis for imposition of civil penalties. It is therefore important that we articulate how we intend to apply our new and expanded civil penalty authority, so as to assure the industry that we will temper strong enforcement measures with consideration of all relevant factors, including mitigating factors, in determining the appropriate remedies.

Background

4. We have a variety of enforcement tools under the principal statutes we administer: the Federal Power Act (FPA), Natural Gas Act (NGA), Natural Gas Policy Act of 1978 (NGPA), and Interstate Commerce Act (ICA).[3] If

[1] Public Law 109–58, 119 Stat. 594 (2005).

[2] We will apply this policy statement on enforcement, and the remedies available for any given violation, in the same manner for jurisdictional market-based rate sellers, natural gas pipelines, and holders of blanket certificate authority as well as for other entities as described by EPAct 2005, including governmental utilities and other market participants. We also note that the factors will be applied, as appropriate, to individuals as well as to corporate entities.

[3] Federal Power Act, 16 U.S.C. 791a, *et seq.* (2000); Natural Gas Act, 15 U.S.C. 717, *et seq.*

regulated utilities and natural gas companies violate the FPA, NGA, or NGPA we can order, among other things, disgorgement of unjust profits. We have the option of conditioning, suspending, or revoking market-based rate authority, certificate authority, or blanket certificate authority.[4] We also have the ability to refer matters to the Department of Justice for criminal prosecution.[5]

5. Beyond these authorities, we have civil penalty authority for violations of specific provisions of the FPA and NGPA.[6] In EPAct 2005 Congress recently granted the Commission enhanced authority to assess civil penalties for violations of the FPA, NGA, and NGPA. EPAct 2005 made three major changes to our civil penalty authority. First, Congress expanded the Commission's FPA civil penalty authority to cover violations of any provision of part II of the FPA, as well as of any rule or order issued thereunder.[7] Second, Congress extended the Commission's civil penalty authority to cover violations of the NGA or any rule, regulation, restriction, condition, or order made or imposed by the Commission under NGA authority.[8] Third, Congress established the maximum civil penalty the Commission may assess under the NGA, NGPA, or part II of the FPA as $1,000,000 per violation for each day that it continues.[9] In addition, Congress expanded the scope of the criminal provisions of the FPA, NGA, and NGPA by increasing the maximum fines and increasing the maximum imprisonment time.[10]

6. In our past enforcement actions we have given credit when appropriate for cooperative conduct in audit and enforcement matters, and orders issued in past matters have discussed aspects of cooperation.[11] With the advent of enhanced civil penalty authority, we are making our existing practice of recognizing cooperation explicit and describing some of the factors that we will consider when deciding on remedies, including penalties, for violations. We also discuss the importance of creating and maintaining effective internal compliance processes, of self-reporting violations, and of cooperation.

Enforcement Policies of Other Agencies

7. In considering the appropriate enforcement policy, we have reviewed the policies of other Federal agencies for guidance. In 2001, the Securities and Exchange Commission (SEC) issued a decision in which it outlined conditions under which it will give credit for self-policing, self-reporting, remediation, and cooperation when determining the appropriate penalty for wrongdoing.[12] The SEC noted the importance of vigorous enforcement action and the imposition of appropriate sanctions when violations occur, but also recognized the value of cooperation by companies when violations occur. While not making specific commitments or limiting itself to the criteria discussed, the SEC provided a list of questions it would consider in deciding whether to bring reduced or no charges, seek lighter sanctions, or provide other mitigation of the severity of enforcement remedies that would otherwise be sought for a violation.

8. In 2003, the Department of Justice issued a memorandum to all United States Attorneys entitled ''Principles of Federal Prosecution of Business Organizations,'' with guidance on charging corporate entities along with individuals in corporate fraud cases.[13] The memorandum stated that credit may be given for corporate cooperation in detecting and correcting wrongdoing, and outlined nine factors to be considered when weighing whether to bring criminal charges against business entities. In 2004, the Federal Sentencing Guidelines were amended to include a detailed discussion of effective compliance and ethics programs and the impact that such programs can have on the calculation of the culpability score used to determine the sentence to be imposed after conviction of a corporation or other business entity.[14]

9. In 1994, the Commodity Futures Trading Commission (CFTC) issued a policy statement with guidelines regarding the CFTC's authority to impose civil penalties and the authority of CFTC-supervised, self-regulating organizations to impose sanctions.[15] The CFTC policy statement set out various factors to be considered with respect to the gravity of the offense, the financial condition of the business entity, and various other considerations that may bear on the appropriate penalty to be imposed. In 2004, the CFTC enforcement staff announced a policy of giving credit for cooperation in futures trading investigations.[16] Noting that consideration of cooperation is discretionary and depends on the circumstances presented, the CFTC staff identified three general areas of cooperative factors to be taken into account in deciding whether staff should recommend reduced sanctions to the CFTC: (1) The nature of a company's efforts to uncover and investigate violations, (2) the quality of a company's efforts in cooperating and managing the aftermath of misconduct, and (3) a company's efforts to prevent future wrongdoing.[17]

10. In adopting enforcement policies, the SEC and the CFTC declined to establish a penalty schedule or formulas for how certain factors would be weighed for given violations. Instead, they emphasized the importance of considering a range of factors that may lead to different penalty decisions

(2000); Natural Gas Policy Act of 1978, 15 U.S.C. 3301, *et seq.* (2000); Interstate Commerce Act, 49 App. U.S.C. 1, *et seq.* (2000).

[4] *See, e.g., Enron Power Marketing, Inc.,* 103 FERC ¶ 61,343 P 52 (2003); Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, 99 FERC ¶ 61,272 at 62,154 (2002); *San Diego Gas & Electric Company,* 95 FERC ¶ 61,418 at 62,548, 62,565 (2001), *order on reh'g,* 97 FERC ¶ 61,275 (2001), *order on reh'g,* 99 FERC ¶ 61,160 (2002); *accord* Show Cause Order, 102 FERC ¶ 61,316 at P 8 & n.10, and cases cited therein.

[5] NGA section 20(a), 15 U.S.C. 717s(a); FPA section 314(a), 16 U.S.C. 825m(a); NGPA section 504(b)(5),15 U.S.C. 3414(b)(5).

[6] FPA section 316A, 16 U.S.C. 825o–1; NGPA section 504(b)(6), 15 U.S.C. 3414(b)(6).

[7] EPAct 2005 section 1284(e)(1), amending FPA section 316A(a).

[8] EPAct 2005 section 314(b)(1), inserting new NGA section 22.

[9] EPAct 2005 section 314(b)(1), inserting new NGA section 22(a); EPAct 2005 section 314(b)(2), amending NGPA section 504(b)(6)(A); and EPAct 2005 section 1284(e)(2), amending FPA section 316A(b).

[10] EPAct 2005 section 314, amending NGA section 21 and NGPA section 504; EPAct 2005 section 1284, amending FPA section 316. We are limited to civil enforcement of our statutes, orders, rules, and regulations, but we may also refer matters to the Department of Justice for criminal prosecution.

[11] *See, e.g., Dominion Resources, Inc.,* ''Order Approving Stipulation and Consent Agreement,'' 108 FERC ¶ 61,110 (2004) (Stipulation noting that ''Dominion Resources voluntarily disclosed these events to Enforcement in July 2003, virtually contemporaneously with the discovery by the company. Dominion Resources fully and completely cooperated with Enforcement's efforts to investigate and resolve this matter'').

[12] *Accounting and Auditing Enforcement,* SEC Release No. 1470 (October 23, 2001).

[13] *Memorandum from Deputy Attorney General Larry D. Thompson to Heads of Department Components and United States Attorneys,* ''Principles of Federal Prosecution of Business Organizations'' (Jan. 20, 2003).

[14] *Effective Compliance and Ethics Programs,* Federal Sentencing Guidelines, Chapter 8, Part B, Section 2 (2004).

[15] *CFTC Policy Statement Relating to the Commission's Authority to Impose Civil Monetary Penalties and Futures Self-Regulatory Organizations' Authority to Impose Sanctions,* ''Penalty Guidelines,'' Comm. Fut. L. Rep. (CCH) ¶ 26,265 (Nov. 1994).

[16] *CFTC Enforcement Advisory,* ''Cooperation Factors in Enforcement Division Sanction Recommendations,'' August 11, 2004.

[17] In addition to the three general areas, the CFTC staff noted that it would consider additional factors, such as the level or organization at which misconduct occurred, whether misconduct was the result of pressure from superiors, how long the misconduct lasted after discovery, whether the company responded with adequate resources, and whether actions were taken to mitigate the misconduct.

depending on the circumstances presented by each case.

Relation of Existing and New Civil Penalty Authority

11. Existing section 316A of the FPA provides that ''[i]n determining the amount of a proposed penalty, the Commission shall take into consideration the seriousness of the violation and the efforts of such person to remedy the violation in a timely manner.'' [18] Section 314 of EPAct 2005 includes identical language in new section 22(c) of the NGA. Thus, the seriousness of the violation is the first touchstone for our determination of the level of penalty to be imposed. Second, the actions by an entity that has engaged in misconduct are relevant to deciding whether the penalty should be reduced or even eliminated. These requirements are reflected in our existing regulations governing imposition of civil penalties under section 31 of the FPA for violations related to hydropower projects.[19] The guidance of this Policy Statement is consistent with the existing rule on factors we consider in the context of hydropower project violations and penalties. In addition, we have a generally applicable policy for considering reductions or waivers of penalties for small entities.[20]

12. Our enhanced civil penalty authority will operate in tandem with our existing authority to require disgorgement of unjust profits obtained through misconduct and/or to condition, suspend, or revoke certificate authority or other authorizations, such as market-based rate authority for sellers of electric energy. This is similar to the ability of the SEC to require an accounting and disgorgement to investors for losses and also to impose penalties for the misconduct, or of the CFTC to order restitution or obtain disgorgement and also to impose fines for violations.[21] In doing so, we intend to take the full range of possible remedies into account in determining whether a penalty should be imposed in addition to other remedies and, if so, the appropriate amount of the penalty.[22] Entities faced with enforcement thus will be subject to the full array of possible enforcement tools, but we will exercise our discretion to apply remedies in a fair, reasonable, and appropriate manner.

13. We noted that the practice of the SEC and CFTC is to decide on remedies on a case-by-case basis, and not to create a schedule of penalties. Likewise, we will not prescribe specific penalties or develop formulas for different violations. It is important that we retain the discretion and flexibility to address each case on its merits, and to fashion remedies appropriate to the facts presented, including any mitigating factors.

14. In the Notice of Proposed Rulemaking issued in Docket No. RM06–3–000 today we propose rules to implement the anti-manipulation provisions of EPAct 2005 while retaining Market Behavior Rule 2 issued in 2003.[23] We note there that we will not seek duplicative sanctions for the same conduct in the event it violates both the new rules and the Market Behavior Rules. This is because both rules, although different in scope and application, address manipulation. In other contexts, violations of more than one statute, order, rule, or regulation may result in separate penalties. Moreover, under our enhanced civil penalty authority, we will develop a consistent approach to the amount of penalties for misconduct so that the penalties are similar in analogous cases, and are evenhanded for similar conduct, taking all relevant factors into account.

15. We do, of course, reserve the right to impose remedies, including civil penalties, and also to refer a violation for criminal prosecution if the facts of the case so warrant. There is no doubt that entities and individuals are subject both to prosecution under criminal provisions of our statutes and to civil remedies.[24] Moreover, perjury, obstruction, and making false statements to members of the Commission staff are criminal offenses.[25] If the misconduct is serious enough, we may refer the matter for criminal prosecution to provide adequate punishment and deterrence. We will take all factors into account in deciding what cases should be referred for criminal prosecution, including the seriousness of the violation, the extent of the harm done, the evidence of willful behavior, and the strength of the evidence of wrongdoing.

16. When we exercise our new civil penalty authority under the NGA, and the expanded authority under part II of the FPA, we are required to provide ''notice and opportunity for a public hearing.'' [26] While procedures for issuing civil penalties are in place under the FPA,[27] EPAct 2005 is silent with respect to procedures under the NGA. When we issue civil penalty notices under the NGA, we intend to provide companies with hearing procedures before an administrative law judge.

Factors Guiding the Selection of Enforcement Remedies

17. Vigorous and even-handed enforcement of our statutes, orders, rules, and regulations protects energy markets and consumers. At the same time it is in the best interest of all segments of the industry that compliance, self-reporting, and cooperation in dealings with the Commission are emphasized. We therefore describe below factors we will take into account in determining the appropriate level of penalty to be imposed for violations of our rules or regulations. We recognize that no list can cover every possible significant factor, and we will consider other pertinent factors as appropriate.

18. In doing so, we first emphasize that we must make enforcement decisions based on all relevant factors, and we therefore must retain the flexibility to weigh all relevant information and apply the policy in light of the facts of each case. This Policy Statement does not confer any rights or guarantees with respect to enforcement actions. We reserve the right to impose appropriate sanctions based on all the facts presented, and we recognize that there may be circumstances where the conduct is so egregious that the full use of the

[18] 16 U.S.C. 825o–1(b) (2000).

[19] 18 CFR 385.1505 (2005).

[20] 18 CFR 2.500 (2005).

[21] *See* sections 21–21C of the Securities Exchange Act, 15 U.S.C. 78u–78u–3 (2000). The CFTC can revoke or suspend a registration, suspend or prohibit certain trading, issue cease and desist orders, order restitution, and seek equitable remedies (injunction, rescission, or disgorgement), all in addition to imposing a monetary fine. 7 U.S.C. 13a & 13b (2000); Comm. Fut. L. Rep. (CCH) ¶ 26,265, p. 42,247.

[22] In considering all available remedies for a violation, we are mindful that the new and enhanced civil penalties are applicable only to violations on and after August 8, 2005. To the extent a previous violation is continuing, however, the new and enhanced penalties are applicable to that violation as of August 8, 2005.

[23] *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* ''Order Amending Market-Based Rate Tariffs and Authorizations,'' 105 FERC ¶ 61,218 (2003), *reh'g denied,* 107 FERC ¶ 61,175 (2004); Order No. 644, *Amendment to Blanket Sales Certificates,* FERC Stats. & Regs. ¶ 31,153 (2003), *reh'g denied,* 107 FERC ¶ 61,174 (2004).

[24] *See* FPA sections 316 and 316A, 16 U.S.C. 825o and 825o–1; NGA sections 21 and 22, 15 U.S.C. 717t; and NGPA section 504, 15 U.S.C. 3414. We note that in EPAct 2005 section 1284(d), Congress repealed FPA section 316(c), which previously had exempted FPA sections 211, 212, 213, and 214 from the criminal sanctions of FPA section 316(a) and (b). Thus, in addition to extending civil penalty authority to all matters under FPA part II, Congress made clear that both civil penalties and criminal sanctions apply to violations of any rule or order issued under FPA part II.

[25] *See, e.g.,* 18 U.S.C. 1001 (2000).

[26] EPAct 2005 section 314(b), inserting new NGA section 22(b); FPA section 316A(b), 16 U.S.C. 825o–1(b) (2000).

[27] 16 U.S.C. 823b (2000).

Commission's penalty authorities is necessary regardless of the presence of other factors.

19. In addition, the enhancement of our civil penalty authority does not mean that we will refrain from ordering the disgorgement of unjust profits or economic benefits that are the result of wrongdoing. To the contrary, companies will be expected to disgorge unjust profits whenever they can be determined or reasonably estimated. The purpose of disgorgement is to nullify the value of gains acquired through misconduct. When evaluating an appropriate remedy, above disgorgement of profit, the Commission will assess the factors described below to determine whether and to what extent other remedies, including suspension or revocation of certificate or market-based rate authority and/or civil penalties, are warranted.

20. As mandated by sections 316A of the FPA and new section 22 of the NGA, the seriousness of the offense is the first consideration in determining appropriate penalties. Factors that may be considered in judging the seriousness of the offense include:

- What harm was caused by the violation? Was there loss of life or injury or endangerment to persons? Was there damage to property or the environment? Was the harm widespread across markets or customers, or was it limited in scope and impact? Did it involve significant sums of money? Were others indirectly affected by the wrongdoing? What benefit did the wrongdoer gain from the violation?
- Was the violation the result of manipulation, deceit, or artifice? Did the wrongdoer misrepresent material facts? Was the conduct fraudulent? Were the actions reckless or deliberately indifferent to the results?
- Was the action willful? Was the violation part of a broader scheme? Did the wrongdoer act in concert with others?
- Is this a repeat offense or does the company have a history of violations? Is this an isolated instance or a recurring problem? Was the wrongdoing systematic and persistent? How long did the wrongdoing last?
- Was the wrongdoing related to actions by senior management, the result of pressure placed on employees by senior management to achieve specific results, or done with the knowledge and acquiescence of senior management? Did management engage in a cover-up?
- How did the wrongdoing come to light? Did senior management resist or ignore efforts to inquire into actions or otherwise impede an inquiry into the violation?
- What effect would potential penalties have on the financial viability of the company that committed the wrongdoing?

Credit for Internal Compliance, Self-Reporting, and Cooperation

21. The second point to be taken into account as required by section 316A of the FPA and new section 22 of the NGA is what efforts the company made to remedy the violation in a timely manner. This aspect of company reaction to wrongdoing involves what consideration will be given for steps taken by entities to prevent, monitor, and immediately stop misconduct, to report violations to the Commission, and to cooperate with the Commission's enforcement actions.

1. Internal Compliance

22. Internal compliance is an important proactive tool. We encourage companies engaged in jurisdictional activities to take steps to create a strong atmosphere of compliance in their organizations. To this end, the following are factors that will be taken into account in determining credit given for a company's commitment to compliance:

- Does the company have an established, formal program for internal compliance? Is it well documented and widely disseminated within the company? Is the program supervised by an officer or other high-ranking official? Does the compliance official report to or have independent access to the chief executive officer and/or the board of directors? Is the program operated and managed so as to be independent? Are there sufficient resources dedicated to the compliance program?
- Is compliance fully supported by senior management? For example, is senior management actively involved in compliance efforts and do company policies regarding compensation, promotion, and disciplinary action take into account the relevant employees' compliance with Commission regulations and the reporting of any violations?
- How frequently does the company review and modify the compliance program? How frequently is training provided to all relevant employees? Is the training sufficiently detailed and thorough to instill an understanding of relevant rules and the importance of compliance?
- In addition to training, does the company have an ongoing process for auditing compliance with Commission regulations?
- How has the company responded to prior wrongdoing? Did it take disciplinary action against employees involved in violations? When misconduct occurs, is it a repeat of the same offense or misconduct of a different nature? Does the company adopt and ensure enforcement of new and more effective internal controls and procedures to prevent a recurrence of misconduct?

23. The answers to these questions will indicate what credit, if any, can be given for the existence of a compliance program when we are considering enforcement action and penalties. We reiterate that credit extends to penalties, compliance plans, and the like but not to disgorgement of unjust profits. As noted earlier, at a minimum a company involved in wrongdoing must disgorge any unjust profits resulting from the wrongdoing.

2. Self-Reporting

24. We place great importance on self-reporting. Companies are in the best position to detect and correct violations of our orders, rules, and regulations, both inadvertent and intentional, and should be proactive in doing so. When a company self-reports violations to the Commission it facilitates remedies to affected parties. The following are considerations in deciding what level of credit to give for self-reporting violations to the Commission when determining the penalties for violations so reported:

- How did the company uncover the misconduct? Was it through a self-evaluation, internal audit, or internal compliance program? Did the company act immediately when it learned of the misconduct?
- Did the company notify the Commission promptly? Did senior management actively participate and encourage employees to provide information to identify the misconduct?
- Did the company take immediate steps to stop the misconduct? Did it implement or create an adequate response to the misconduct?
- Did the company arrange for individuals with full knowledge of the matter to meet with Commission enforcement staff?
- Did the company present its findings to the Commission and provide all relevant evidence regarding the misconduct, including full disclosure of the scope of the wrongdoing; the identity of all employees involved, including senior executives; the steps taken by the company upon learning of the misconduct; communications among involved employees; documents evidencing the misconduct; and

measures taken to remedy the misconduct?

25. As stated earlier, we cannot determine in advance how much credit is given for self-reporting. It is possible, however, that prompt and full self-reporting of violations, coupled with steps to correct the adverse impact on customers or third parties from the misconduct, may result in a significant reduction in the amount of civil penalty or no civil penalty being assessed. Companies should still expect to disgorge any unjust profits.

3. Cooperation

26. Cooperation may come in any context—a company response to a Commission inquiry, audit, or investigation, or in voluntary self-reporting of misconduct. We expect cooperation, as entities subject to our jurisdiction are required to provide us with information at our request.[28] Still, we will give some consideration to exemplary cooperation, that is, cooperation which quickly ends wrongful conduct, determines the facts, and corrects a problem. Cooperation must come very early in the process, however, and must be in good faith, consistent, and continuing. No credit will be given if a company does no more than the minimum, or delays cooperation, or purports to cooperate but actually engages in conduct that impedes the Commission's activities or consumes Commission resources unnecessarily. The following are indicative of cooperation for which credit may be given when we determine the appropriate penalty to be imposed for wrongdoing. Although these factors are similar to those described above with respect to self-reporting, they remain relevant in the context of cooperation because, under appropriate circumstances, the Commission will consider these factors even for entities that did not self-report violations, provided that cooperation was provided once the violation was uncovered.

- Did the company volunteer to provide internal investigation or audit reports relating to the misconduct? Did the company hire an independent outside entity to assist the company's investigation?
- Did senior management make clear to all employees that their cooperation has the full support and encouragement of management and the directors of the company?
- Did the company facilitate Commission access to employees with knowledge and information bearing on the issue, and actively encourage such employees to provide the Commission with complete and accurate information?
- Did the company identify culpable employees and assist the Commission in understanding their conduct?
- Did the company make records readily available, with assistance on searching and interpreting information in the records?
- Did the company fairly and accurately determine the effects of the misconduct, including identifying the revenues and profits resulting from the misconduct and the customers or market participants adversely affected by the misconduct?

27. It is possible for an entity to comply with the majority of the stated factors in part, but without wholeheartedly devoting its resources and efforts to cooperation. Likewise, it is conceivable for an entity to cooperate in certain aspects yet hinder enforcement investigation in others. Lack of cooperation is a serious matter and will be weighed in deciding appropriate remedies. Uncooperative conduct includes such things as failing to respond to data requests in a timely manner; failing to produce documents and witnesses within a reasonable period; misrepresenting the nature or extent of the misconduct; claiming that records are unavailable when they are; limiting staff access to employees; inappropriately directing or influencing employees or their counsel not to cooperate fully or openly with the investigation; engaging in obstructive conduct during investigative testimony or interviews; providing specious explanations for instances of misconduct that are uncovered; failing properly to search computer hard drives for documents and electronic images; and failing to provide documents in the way they are maintained in the normal course of business. The manner in which a company approaches cooperation will be an important factor in determining whether, and how much, credit may be given for cooperation.

Conclusion

28. The factors discussed in this Policy Statement provide guidance to the industry on the approach we will take to future enforcement. It is consistent with past Commission practice, and with the practices of other federal agencies with similar powers. Entities subject to the Commission's jurisdiction should expect firm but fair enforcement in the future, including the use, as appropriate, of the substantial new civil penalty authority provided by EP Act 2005.

29. At the same time, entities can take steps to improve and ensure compliance by their officers, employees, and agents with our statutes, orders, rules, and regulations. We place a high value on internal compliance, self-reporting, and cooperation. The credit we will give for mitigating factors, including proactive steps taken by companies, depends on many factors and cannot be reduced to a predictable quantity. But where many of the positive factors of internal compliance, self-reporting, and cooperation are present, we will take those factors into account in determining the appropriate penalties for violations.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 05–21899 Filed 11–1–05; 8:45 am]

BILLING CODE 6717–01–P

[28] FPA section 301(b), 16 U.S.C. 825b(b); NGA section 8(b), 15 U.S.C. 717g(b); NGPA section 304(a), 15 U.S.C. 3314(a).

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2005–0118, FRL–7993–3]

Agency Information Collection Request Activities: Renewal of the Collection Request for the Outer Continental Shelf Air Regulation; EPA ICR Number 1601.06, OMB Control Number 2060–0249

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA has submitted a renewal for a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). The proposed request was for renewal of an existing approved collection which is scheduled to expire on October 31, 2005. Before submitting the ICR to OMB for review and approval, EPA solicited comments on specific aspects of the proposed information collection as described below. The EPA received comments submitted to the docket from the U.S. Department of the Interior Minerals Management Service and has responded by making certain suggested changes and corrections which are found in this final document.

FOR FURTHER INFORMATION CONTACT: David Sanders, Ozone Policy and Strategies Group, Mail Drop C539–02, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–

3356; fax number: (919) 541–0824 ; e-mail address: *sanders.dave@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA has established a public docket for this ICR under Docket ID number OAR–2005–0118, which is available for public viewing at the Air and Radiation 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 Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

The EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, is available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are all outer continental shelf sources except those located in the Gulf of Mexico west of 87.5 degrees longitude (near the border of Florida and Alabama). For sources located within 25 miles of States' seaward boundaries, the requirements are the same as those that would be applicable if the source were located in the corresponding onshore area (COA). In States affected by this rule, State boundaries extend three miles from the coastline, except off the coast of the Florida Panhandle, where the State's boundary extends three leagues (about nine miles) from the coastline.

Title: Outer Continental Shelf Air Regulations, EPA ICR Number 1601.06 and OMB Control Number 2060.0249, expiration date: October 31, 2005.

Abstract: Sources located beyond 25 miles of States' boundaries are subject to Federal requirements (implemented and enforced solely by EPA) for Prevention of Significant Deterioration (PSD), New Source Performance Standards (NSPS), National Emissions Standards for Hazardous Air Pollutants Standards (NESHAPS), the Federal operating permit program, and the enhanced compliance and monitoring regulations. Before any agency, department, or instrumentality of the Federal government engages in, supports in any way, provides financial assistance for, licenses, permits, approves any activity, that agency has the affirmative responsibility to ensure that such action conforms to the State implementation plan (SIP) for the attainment and maintenance of the national ambient air quality standards (NAAQS). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information request unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and 48 CFR chapter 15. Section 176(c) of the Clean Air Act (42 U.S.C. 7401 *et seq.*) requires that all Federal actions conform with the SIPs to attain and maintain the NAAQS. Depending on the type of action, the Federal entities must collect information themselves, hire consultants to collect the information or require applicants/sponsors of the Federal action to provide the information.

The type and quantity of information required will depend on the circumstances surrounding the action. First, the entity must make an applicability determination. If the source is located within 25 miles of the State's seaward boundaries as established in the regulations, the requirements are the same as those that would be applicable if the source were located in the COA. State and local air pollution control agencies were requested to provide information concerning regulation of offshore sources and were provided opportunities to comment on the proposed determinations. The public also was provided an opportunity to comment on the proposed determinations.

The EPA did solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement

Total Industry Respondent Burden and Costs

The estimated industry respondent burden for total labor hours and costs associated with one-time/periodic activities are estimated to be 30,575 hours and $1,654,248, respectively. Total labor hours and costs associated with annual activities are estimated to be 30,244 hours and $1,636,362, respectively. Total industry respondent costs annualized over the 3-year time period are estimated to be $1,636,362 per year.

Total State and Local Agency Burden and Costs

The estimated State and local agency burden for total labor hours and costs associated with one-time/periodic activities are estimated to be 3,821 hours and $206,333, respectively. Total labor hours and costs associated with annual activities for that time period are estimated to be 3,801 hours and $205,254, respectively. Total costs annualized over the 3-year time period are estimated to be $204,102 per year.

Total EPA Burden and Costs

The estimated EPA burden for total labor hours and costs associated with one-time-only activities are estimated to be 3,549 hours and $170,359, respectively. Total labor hours and costs associated with annual activities are estimated to be 3,532 hours and $169,515, respectively. Total costs annualized over the 3-year time period are estimated to be $168,672 per year.

Burden means the total time, effort, or financial resources expended by persons

to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: October 26, 2005.

Mary E. Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 05–21926 Filed 11–1–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0004; FRL–7736–7]

Access to Confidential Business Information by the General Accountability Office

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized the General Accountability Office (GAO), access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA) and the Federal, Insecticide, Fungicide, and Rodenticide Act (FIFRA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to confidential business data started on October 1, 2005.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA–Hotline@.epa.gov.*

Additional information on the GAO request and security issues can be obtained from: Erik R. Johnson, Acting Information Management Official (IMO) and Primary Information Security Officer (ISO), Office of Prevention, Pesticides and Toxic Substances (OPPTS), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–0521; e-mail address: *Johnson.Erik@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to comply with laws administered by EPA. 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 Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0004. 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 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 EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

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 submit or view public comments, to 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. What Action is the Agency Taking?

On August 16, 2005, in accordance with 40 CFR 2.209, the Comptroller General of the GAO requested access to information collected through the authority of TSCA and FIFRA. Some of this information has been treated as CBI. GAO needs this information in connection with its review of EPA's risk assessment processes. EPA has granted GAO access to these materials effective October 1, 2005.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA and FIFRA, that the Agency has provided GAO access to these CBI materials on a need-to-know basis only. All access to TSCA and FIFRA CBI under this arrangement, takes place at EPA Headquarters, and GAO Headquarters located at 441 G St., NW., Washington, DC 20548.

Clearance for access to TSCA and FIFRA CBI under this arrangement may continue until May of 2006. Access started on October 1, 2005.

GAO personnel have signed non-disclosure agreements and were briefed on appropriate security procedures before they were permitted access to the CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: October 18, 2005.

Susan B. Hazen,

Assistant Administrator, Office of Prevention, Pesticides, and Toxic Substances.

[FR Doc. 05–21839 Filed 11–1–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0263; FRL–7742–9]

MCPB Risk Assessment, Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments and related documents for the phenoxy herbicide, MCPB (4-(2-methyl-4-chlorophenoxy) butyric acid), and opens a public comment period on these documents. The public is encouraged to suggest ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for MCPB through a modified, 4–Phase

public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards. This is Phase 3 of the 4–Phase process.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0263, must be received on or before January 3, 2006.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: James Parker, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0469; fax number: (703) 308–7042; e-mail address: *parker.james@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others 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 ID number OPP–2005–0263. 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 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 in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. 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. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets

at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0263. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2005–0263. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2005–0263.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2005–0263. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments and related documents for MCPB. MCPB is a selective phenoxy herbicide which is produced as a sodium salt and an acid to be used post-emergence as a broadcast foliar application to control broad-leaved annual and perennial weeds in peas. EPA is developing the risk assessments for MCPB through a modified 4–Phase version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for MCPB. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as information used to assess bird and mammal risks or other information that could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to MCPB compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For MCPB, a modified, 4–Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its risk assessments. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for MCPB. Comments received after the close of the comment period will be marked ''late.''

EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 25, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–21758 Filed 11–1–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0380; FRL–7744–1]

Dimethipin; Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide dimethipin. The Agency's risk assessments and other related documents also are available in the dimethipin docket. Dimethipin is registered for use as a cotton growth regulator and dessicant. In addition, it is used as a post-emergence herbicide on cotton and nonbearing apple nursery stock. EPA has reviewed dimethipin through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

FOR FURTHER INFORMATION CONTACT: Amaris Johnson, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–9542; fax number: (703) 308–8041; e-mail address:*johnson.amaris@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0380. 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 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 in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. 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. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a Reregistration Eligibility Decision (RED) for the pesticide, dimethipin under section 4(g)(2)(A) of FIFRA. Dimethipin is registered for use as a cotton growth regulator and dessicant. In addition, it is used as a post-emergence herbicide on cotton and nonbearing apple nursery stock. EPA has determined that the data base to support reregistration is substantially complete and that products containing dimethipin are eligible for reregistration. Upon submission of any required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing dimethipin.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act

(FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the dimethipin tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its limited uses, low risks, and other factors, dimethipin was reviewed through the modified 4–Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for dimethipin. The Agency decided that a comment period on the RED was not necessary, as there were no comments received during the Phase 3 public comment period and no miligation measures were required.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 21, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–21757 Filed 11–1–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0256; FRL–7743–4]

Ethylenebisdithiocarbamate (EBDC) Fungicides Mancozeb, Maneb, and Metiram; Notice of Receipt of Requests to Voluntarily Cancel, Amend, or Terminate Uses of Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by the registrants to voluntarily cancel and/or amend their registrations to terminate uses of certain products containing the pesticides mancozeb, maneb, and metiram. The requests would terminate mancozeb use on athletic fields and pachysandra; maneb use on apples, grapes, kadota figs, and sweet corn; and maneb seed treatment use for peanuts and rice. EPA has also received a request to terminate the use of the fungicide product, Maneb 80 WP Fungicide (EPA Reg. No. 4581–255), on sod farm turf. In addition, EPA has received a request for voluntary cancellation of the metiram product registration for Potato Seed Treater Fungicide (EPA Reg. No. 2935–540). These requests would not terminate the last mancozeb, maneb, and metiram products registered for use in the United States. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests within this period. Upon acceptance of these requests, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before December 2, 2005.

ADDRESSES: Comments, identified by docket identification (ID) number 2005–0256, may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For mancozeb, Christina Scheltema, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–2201; fax number: (703) 308–8005; e-mail address: *scheltema.christina@epa.gov*.

For maneb and metiram, Tawanda Spears, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8050; fax number: (703) 308–8005; e-mail address: *spears.tawanda@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the persons 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 ID number OPP–2005–0256. 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 submit or view public comments, to 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 in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. 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. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http;//www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0256. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2005–0256. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2005–0256.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2005– 0256. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the persons listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background on the Receipt of Requests to Terminate Certain Uses for the EBDC Pesticides Mancozeb, Maneb, and Metiram

This notice announces receipt by EPA of requests from the registrants Cerexagri, Dow AgroSciences, Griffin LLC, and Wilbur-Ellis Company to amend or to terminate certain uses of 16 mancozeb product registrations, 3 maneb product registrations, and 1 metiram product registration (Tables 1–3 of Unit III). These pesticides are broad spectrum EBDC fungicides used on a variety of agricultural crops, ornamentals, and turf. In letters dated August 25, August 29, and September 16, 2005, Cerexegri, Dow AgroSciences, and Griffin LLC respectively, have requested that EPA terminate the uses of mancozeb on athletic fields and pachysandra. The registrants are no longer supporting these uses and wish to have them removed from product labels. However, these three registrants are retaining some mancozeb turf uses, specifically, use on sod farms, grass grown for seed, golf courses, and commercial and industrial lawns. Further, in a letter dated September 12, 2005, Cerexagri has requested that EPA terminate use of maneb on apples, grapes, kadota figs, peanut seed, rice seed, and sweet corn, and remove these uses from the appropriate product labels. Cerexagri's September 12, 2005 letter also requests deletion of the sod farm turf use from the Maneb 80 WP Fungicide label. Last, in a letter dated June 20, 2005, Wilbur-Ellis Company requested voluntary cancellation of the metiram product registration for Potato Seed Treater Fungicide (EPA Reg. No. 2935–540).

III. What Action is the Agency Taking?

This notice announces receipt by EPA of requests from registrants to amend or cancel certian mancozeb, maneb, and metiram product registrations to terminate uses. The affected products and the registrants making the requests are identified in Tables 1-4 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

Each of the registrants affected by this notice has requested, in their letters, that EPA waive the 180–day comment period. EPA is thus providing a 30–day comment period.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued canceling and/or amending the affected registrations to delete certain uses.

TABLE 1.—MANCOZEB PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR USE DELETIONS

Registration No.	Product name	Uses proposed for deletion
1812–360	MANKOCIDE®/JUNCTION®	Athletic fields, pachysandra
1812–414	MANZATE® 75 DF/PENTATHLON® DF	Athletic fields, pachysandra
1812–415	MANZATE® 80 WP	Athletic fields, pachysandra
1812–416	MANZATE® Flowable/PENTATHLON® LF	Athletic fields, pachysandra
4581–358	Penncozeb® 80WP	Athletic fields, pachysandra
4581–370	Penncozeb® 75 DF	Athletic fields, pachysandra
4581–394	Penncozeb® 4FL	Athletic fields, pachysandra
62719–387	Dithaner M45	Athletic fields, pachysandra
62719–388	Forer 80WP Rainshield®	Athletic fields, pachysandra
62719–396	Dithane F-45 Rainshield	Athletic fields, pachysandra

TABLE 1.—MANCOZEB PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR USE DELETIONS—Continued

Registration No.	Product name	Uses proposed for deletion
62719–398	Dithane M-45 Flowable M	Athletic fields, pachysandra
62719–401	Dithane WSP Agricultural Fungicide	Athletic fields, pachysandra
62719–423	Dithane WSP Agricultural Fungicide	Athletic fields, pachysandra
62719–402	Dithane DF Rainshield	Athletic fields, pachysandra
62719–418	RH-0611 WP	Athletic fields, pachysandra
62719–422	Fore WSP T and O Fungicide	Athletic fields, pachysandra

TABLE 2.—MANEB PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR USE DELETIONS

Registration No.	Product name	Uses proposed for deletion
4581–255	Maneb 80WP Fungicide	Apples, grapes, kadota figs, sweet corn, and seed treatment for peanuts and rice, and sod farm turf
4581–359	Maneb 4FL	Apples, grapes, kadota figs, sweet corn, and seed treatment for peanuts and rice
4581–371	Maneb 75DF Dry Flowable Fungicide	Apples, grapes, kadota figs, sweet corn, seed treatment for peanuts and rice

TABLE 3.—METIRAM PRODUCT REGISTRATION WITH REQUEST FOR VOLUNTARY CANCELLATION

Registration No.	Product name	Company name
2935–540	Potato Seed Treater Fungicide	Wilbur-Ellis Company

Table 4 of this unit includes the names and addresses of record for the registrants of the products listed in Tables 1-3 of this unit.

TABLE 4.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS TO DELETE USES

EPA Company No.	Company name and address
1812	Griffin LLC P.O. BOX 30 Newark, DE 19714
2935	Wilbur-Ellis Company Product Regulatory Department 2737 S. Golden State Blvd. Fresno, CA 93715
4581	Cerexagri Inc. 630 Freedom Business Center Suite 402 King of Prussia, PA 19406
62719	Dow AgroSciences 9330 Zionsville Rd. Indianapolis, IN 46268

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of Mancozeb, Maneb, and Metiram

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the persons listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before December 2, 2005. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. If the request for use termination is granted as discussed in this notice, the Agency intends to issue a cancellation order that will allow the registrant to continue to sell and distribute existing stocks of products bearing old labeling for 18 months after the date of the use termination order. Persons other than the registrant may continue to sell and/or use existing stocks of products bearing old labeling until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests, EBDCs, Mancozeb, Maneb, Metiram.

Dated: October 20, 2005.

J. E. Leahy, Jr.,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–21626 Filed 11–1–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0311; FRL–7739–7]

Endangered Species Protection Program Field Implementation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document describes how EPA's Office of Pesticide Programs intends to implement its Endangered Species Protection Program (ESPP or the Program). The goal of the ESPP is to carry out responsibilities under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in compliance with the Endangered Species Act (ESA), while at the same time not placing unnecessary burden on agriculture and other pesticide users. This document describes EPA's approach to implementing its responsibilities under section 7(a)(2) of ESA subsequent to a determination by EPA that geographically specific risk mitigation is necessary to protect federally listed threatened or endangered species or their critical habitat. For purposes of the ESPP, the term ''listed species'' or ''endangered species'' will encompass species listed as threatened or endangered, plus designated critical habitat of these species; the term ''county'' will include counties, parishes, and similar political boundaries of U.S. Territories. The implementation approach relies on pesticide labels, as appropriate, referring the pesticide user to geographically specific Endangered Species Protection Bulletins that will contain enforceable use limitations for the pesticide necessary to ensure the pesticide's use will not jeopardize the continued existence of a listed species.

FOR FURTHER INFORMATION CONTACT: *For technical information*: Arthur-Jean B. Williams, Environmental Fate and Effects Division (7507C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7695; fax number: (703) 305–6309; e-mail address: *williams.arty@epa.gov*.

For field implementation information: Mary Powell, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7384; fax number: (703) 308–3259; e-mail address: *powell.mary@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to State and Tribal regulatory partners, other interested Federal agencies, environmental or public interest groups, pesticide registrants and pesticide users. 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 technical 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–2002–0311. 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, to 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. Background

A. What Action is the Agency Taking?

This Notice describes EPA's field implementation plan for putting in place any geographically specific pesticide use limitations EPA deems necessary to ensure EPA's compliance with ESA section 7(a)(2). This approach will be used to put in place pesticide use limitations identified as necessary by EPA during the course of its endangered species risk assessment process or through consultations with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) . These protections or use limitations will be enforceable by EPA under section 12 of FIFRA.

This Notice is organized into four units. Unit I. provides general information about applicability of this document and the availability of additional information. Unit II. provides background information, including the Agency's legal authority for taking this action, and a summary of public comments on EPA's proposed approach (67 FR 71549, December 2, 2002) (FRL–7283–7) and its response to those comments. Unit III. describes the Program, including its scope, overall approach, and Endangered Species Protection Bulletins. Unit IV. contains references to other documents used in the development of and referenced in this Notice.

EPA will begin using this approach to implement geographically specific risk mitigation for the protection of listed species or their critical habitat upon publication of this Notice. EPA's plan as described in this document, however, is not a legally binding regulation and EPA may decide to revise, amend, or act at variance with the terms of this document without providing notice and comment under section 553 of the Administrative Procedure Act.

B. What is the Agency's Authority for Taking this Action?

Since 1970, EPA has had responsibility for regulating the sale, distribution, and use of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA has granted registrations, or licenses, for thousands of pesticides containing hundreds of active ingredients. These

registrations encompass thousands of different use sites and practices across the United States.

FIFRA as amended (7 U.S.C. 136 *et seq.*) governs the regulation of pesticides in the United States. Under FIFRA, a pesticide product generally may be sold or distributed in the United States only if it is registered by EPA. Before a product can be registered unconditionally, it must be shown, among other things, that the pesticide, when used in accordance with widespread and commonly recognized practices, will not generally cause ''unreasonable adverse effects on the environment'' (FIFRA section 3(c)(5)). FIFRA defines this standard to include ''any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of'' the pesticide (FIFRA section (2)(bb)(1)). This is known as the FIFRA risk/benefit standard.

Amendments to FIFRA in 1988 required that, in addition to the original registration decision, all pesticides first registered before November 1984, be reviewed against more up-to-date data requirements and standards, and decisions be made about whether these pesticides should be ''reregistered'' (FIFRA section 4(a)). FIFRA was amended again in 1996 with enactment of the Food Quality Protection Act (FQPA). FQPA put into place a new standard for assessing human dietary risk (FIFRA section 2(bb)(2)), but it did not alter the risk/benefit standard of section 2(bb)(1) for assessing ecological risk. It also required that EPA periodically review pesticide registrations (establishing a goal of review every 15 years) to determine whether such registrations meet the requirements of the Act (FIFRA section 3(g)(1)(A)). This latter requirement is known as registration review. EPA recently published a Notice of Proposed Rulemaking (NPRM) to establish procedural regulations for conducting registration review (70 FR 40251, July 13, 2005) (FRL–7718–4).

The purpose of the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*) is to protect and promote the recovery of animal and plant species that are threatened or in danger of becoming extinct and to ensure that the critical habitat upon which they depend is not destroyed or adversely modified.

Section 7(a)(1) of the ESA, 16 U.S.C. 1536(a)(1), requires federal agencies to use their authorities in furtherance of the purposes of the ESA by carrying out programs for the conservation of listed species.

Section 7(a)(2) of the ESA, 16 U.S.C. 1536(a)(2), and the implementing regulations at 50 CFR part 402, further require federal agencies to ensure that their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. This duty extends to licensing activities such as the registration of pesticides by EPA. In meeting the section 7(a)(2) requirement, EPA must, under certain circumstances, consult with the Secretary of the Interior (which has delegated the interagency consultation responsibilities to the FWS) and the Secretary of Commerce (which has delegated the interagency consultation responsibilities to the NMFS within the National Oceanic and Atmospheric Administration), regarding the effects of Agency actions on listed species or designated critical habitat. In fulfilling this requirement, federal agencies must use the best scientific and commercial data available.

Section 7(a)(4) of the ESA, 16 U.S.C. 1536(a)(4), requires federal agencies to confer with the Services (jointly, FWS and NMFS) on any agency action that will likely jeopardize the continued existence of any species proposed to be listed as threatened or endangered, or adversely modify critical habitat proposed to be designated for endangered species.

In 1988, Congress addressed the relationship between the ESA and EPA's pesticide labeling program in section 1010 of Public Law 100–478 (October 7, 1988), which required EPA to conduct a study and to provide Congress with a report of the results (U.S. EPA's 1991 report to Congress: Endangered Species Protection Program as it Relates to Pesticide Regulatory Activities, EPA 540–09–91–120, May 1991) on ways to implement EPA's endangered species pesticide labeling program in a manner that both promotes the conservation of listed species and minimizes the impacts to persons engaged in agricultural food and fiber commodity production and other pesticide users and applicators. This law provided a clear sense that Congress desires that EPA should fulfill its obligation to conserve listed species, while at the same time considering the needs of agriculture and other pesticide users. Further, section 1010 subsection (a) directs EPA to take public comment on any proposed pesticide labeling program imposed in order to comply with the ESA. Pursuant to that provision, EPA issued and sought public comment on its Endangered Species Protection Program in December 2002 (67 FR 71549, December 2, 2002).

The Services have promulgated regulations at 50 CFR part 402 addressing the means by which all federal agencies may satisfy their ESA section 7(a)(2) consultation obligations. In 2004, the Services published Counterpart Regulations (69 FR 47732, August 5, 2004) that provide additional alternative procedures that EPA may use to meet its ESA section 7(a)(2) obligations for pesticide regulatory actions under FIFRA. In order to use the Counterpart Regulations, EPA entered into an Alternative Consultation Agreement (ACA) (Ref. 4) with the Services. This ACA establishes the interagency process for implementing and ensuring compliance with the Counterpart Regulations. In connection with the development of the Counterpart Regulations and the ACA, EPA developed its Technical Overview of Ecological Risk Assessment (Ref. 1), detailing EPA's approach to ecological risk assessment for endangered species. This ''Overview'' document and the processes it describes were reviewed by the Services and deemed to be processes that will result in ESA-compliant risk determinations (Ref. 6).

C. EPA's Role

1. *ESA section 7(a)(1) obligations.* As noted in Unit II.B., EPA has responsibilities under both section 7(a)(1) and 7(a)(2) of the ESA. Under section 7(a)(1), EPA uses its authorities to conserve listed species, in consultation with the Services. EPA's Office of Pesticide Programs (OPP) has carried out a number of activities intended to conserve listed species, including: Hosting a web site that contains listed species fact sheets and a county-scale data base of listed species locations by county, and producing and disseminating informational and educational materials. Additionally, EPA has worked with State agencies responsible for pesticide programs and extension services to ensure that pesticide applicators certified by the States receive, during their certification training, information on listed species' protection needs. Listed species issues and concerns are included as part of the testing requirements for State-certified applicators in many States.

2. *ESA section 7(a)(2) obligations.* Under section 7(a)(2) of ESA, EPA must ensure that its actions are ''not likely to jeopardize the continued existence of any'' listed species or ''result in the destruction or adverse modification of'' their designated critical habitat. The ESA does not, however, provide action agencies, such as EPA, with independent authority to modify agency actions for the benefit of listed species.

Rather, action agencies must utilize their existing authorities, such as EPA's authority under FIFRA, to the extent permissible, to provide such protections. Accordingly, EPA's challenge is to implement FIFRA, a risk/benefit statute, in a way that harmonizes with the ESA, to the fullest extent possible, at use sites that are geographically, ecologically, agronomically, and economically diverse and changeable. EPA seeks to carry out these protections for thousands of pesticide products in ways that users can be expected to implement reliably and routinely without unnecessary burden.

The Agency is responsible for reviewing information and data to determine whether a pesticide product may be registered under FIFRA for a particular use. As part of that determination, the Agency assesses whether listed species or their designated critical habitat may be affected by the use of the product. If EPA determines that a proposed pesticide registration action will have no effect on any listed species or designated critical habitat, consultation under ESA section 7(a)(2) is not required. A determination that a proposed pesticide registration action is not likely to adversely affect any listed species or designated critical habitat is subject to the Services' consultation regulations regarding ''informal consultation.'' EPA may either utilize the provisions of the Counterpart Regulations at 50 CFR part 402, subpart D, and complete this determination without obtaining Service concurrence, or EPA may choose to seek the written concurrence of the Services on this finding under the Services' regulations at 40 CFR part 402, subpart B, that apply to all federal agencies. If EPA determines that a proposed pesticide registration action is likely to adversely affect a listed species or designated critical habitat, EPA is required to enter into a process with the Services called ''formal consultation.'' The consultation process is designed to assist federal agencies in developing actions that will not jeopardize the continued existence of any listed species or result in destruction or adverse modification of any designated critical habitat (ESA section 7(a)(2)). Following consultation, the Agency is responsible for implementing protections, if necessary, through its available authority.

D. The Roles of FWS and NMFS

The Department of the Interior's U.S. Fish and Wildlife Service (FWS) administers the ESA for most species. The Department of Commerce's National Marine Fisheries Service (NMFS) administers the ESA for certain marine and anadromous species. EPA may enter into informal or formal consultation with the Services concerning effects to listed species or critical habitat (or confer on proposed species). At the conclusion of formal consultation, the Services determine whether an EPA action is likely to jeopardize the continued existence of a species or destroy or adversely modify designated critical habitat. If the action is likely to cause jeopardy, the Services propose reasonable and prudent alternatives, to the extent available, to avoid jeopardy. In connection with consultation, the Services' Biological Opinion will also address whether incidental take is anticipated from the Agency's action. If so, the Services may authorize a certain amount of incidental take, provided any reasonable and prudent measures identified by the Services are adopted by the Agency and followed by pesticide users. Take, as defined in section 3(18) of the ESA, is unlawful unless the Services issue an incidental take statement that provides an exemption to the prohibitions on take of listed wildlife, incidental to certain federal actions. The Services maintain enforcement authority regarding the unlawful take of listed species under section 9 of the ESA.

E. Summary of Comments on EPA's ESPP Proposal

On December 2, 2002, EPA published a **Federal Register** Notice soliciting public comment on its proposed field implementation program (67 FR 71549). EPA received 228 letters in response. Most of the letters (143) were from private citizens. Letters were also received from agricultural and pesticide associations (55), State and federal agencies and their representatives (18), and environmental groups (12). When broken out into individual topics, the comments within these letters totaled more than 600.

Commenters were fairly evenly split between those who generally supported the proposal and those who generally opposed it. Supportive commenters said the proposal was an appropriate balance of Program goals that makes efficient use of resources and Agency expertise in pesticide regulation. Opposing commenters said the proposal was inadequate to protect listed species, weakened existing laws, and should in no way consider economics in determining protections for listed species.

Numerous comments were received on consultation, technical, and science policy issues that were outside the scope of the ESPP. While the proposal included a summary of EPA's processes for making effects determinations and consulting with the Services, that information was included solely to provide context to the reader. For more information about the technical aspects of endangered species risk assessment and consultation with the Services, readers are referred to the Counterpart Regulations at 50 CFR part 402 (69 FR 47732, August 5, 2004), EPA's Overview Document (Ref. 1), and the Alternative Consultation Agreement (Ref. 4).

All comments submitted in response to the proposal are available in docket ID number OPP–2002–0311 as described in Unit I.B. A summary of the specific areas on which EPA requested comment, follows below.

1. *FIFRA section 18 emergency exemptions.* The Agency requested comment on how it proposed to address endangered species in the context of FIFRA section 18 emergency exemptions in general and specifically for public health emergencies.

Comment: Most of 24 commenters acknowledged the necessity for a rapid response in public health emergencies, but differed on the point at which an endangered species review should be carried out, if at all, and whether consultation may be appropriate in such situations. Suggested alternatives to the proposed approach included requiring that FWS and State, Tribal and local officials establish a balanced program to solve health emergencies on a case-by-case basis with minimal impact on listed species, and assume some take would occur (1 commenter); consulting with as many State and federal agencies as possible to respond to the emergency (1 commenter); detailing a FWS person to EPA to work with EPA on requests for crisis exemptions (1 commenter); and, if no ESA review is done because of the extreme nature of the emergency, complete the listed species review as soon as possible afterward, without extending the emergency registration until the ESA review is completed (6 commenters).

Response: While EPA will endeavor to resolve concerns regarding listed species prior to taking an action, that may not always be possible for section 18s, which by their very nature are time critical, especially those involving public health emergencies. When submitting a section 18 request States, Tribes and federal agencies will be expected to demonstrate they have made a credible effort to identify and address endangered species issues. The more thorough the approach of the submitter, the more likely it will be that EPA can conduct its endangered species

assessment and consult with the Services, as necessary, within the time constraints for review of FIFRA section 18 applications. However, under the Counterpart Regulations, the Services have indicated that emergencies under section 18 of FIFRA may be treated as ''emergencies'' under the Services' consultation regulations. As a result, if EPA cannot perform a comprehensive endangered species assessment or, if applicable, initiate and complete formal consultation within the time constraints for review of a section 18 application, EPA may use the emergency informal consultation procedures described in the Services' Endangered Species Consultation Handbook (Ref. 5) and complete any necessary formal consultation as soon as practicable after the emergency.

2. *County Bulletins*. The proposal described the substance of county-level Endangered Species Protection Bulletins (Bulletins) that would be the mechanism to inform pesticide users of any specific changes to pesticide use required to protect a listed species. The Agency requested comment on a variety of aspects of the Bulletins, ranging from how to make them more understandable to frequency of updates and distribution mechanisms. EPA received about 150 comments on a range of issues about the Bulletins, including when their use is appropriate, how to make them easier to use, when to update them, and how to work more effectively with States in Bulletin development.

Comment: General--Bulletins were viewed by some as either inadequate to protect listed species (5 commenters) or as providing a practical, site-specific mechanism for protecting listed species that may be affected by pesticide use (20 commenters). About 40 commenters said Bulletins should not be required if alternative protection measures for listed species exist, such as landowner or conservation agreements; most of those same commenters said growers and their consultants should have the right to use alternative mitigation measures to protect listed species if their methods are scientifically defensible. Other commenters supported the Bulletins, but expressed concerns about privacy, frequency and notification of updates, and methods used to determine areas requiring protections for listed species.

Response: EPA continues to believe that Bulletins offer the best compromise between the lengthy time required to change product labels and being able to more quickly inform pesticide users of any required use limitations to protect listed species or critical habitat. Under the Agency's approach, the label will carry a generic label statement referring pesticide users to the Bulletin. The Bulletins will carry the same weight for enforcement purposes as information on the label, and failure to follow the appropriate Bulletin would be subject to enforcement action under FIFRA.

The ESA requires EPA to ensure that the pesticide registration actions it authorizes are not likely to jeopardize the continued existence of listed species or adversely modify the designated critical habitat of such species. The Services have endorsed EPA's risk assessment process for pesticides, as outlined in the Agency's Overview Document (Ref. 1), as an appropriate means of assessing risks and making effects determinations for listed species and designated critical habitat. Before EPA could consider an alternative protective measure, it would need to ensure that the assessment methods used by the State or Tribe were adequate to evaluate risks to the species and critical habitat and that any alternative measures would provide adequate protection. EPA cannot, therefore, omit from consideration lands subject to landowner or conservation agreements when assessing risks to listed species. However, if EPA's risk assessment concludes that such agreements are an appropriate and effective means to protect listed species, EPA could adopt those measures by stating in the Bulletin itself that a pesticide user must apply the pesticide only under the terms and conditions of the agreement.

EPA will seek input, as appropriate, from stakeholders on use limitations it includes in the Bulletins prior to adopting them. It would be appropriate to bring to EPA's attention any alternative protective methods the user community believes exist at that time. Opportunities for public participation exist throughout EPA's decision process. Therefore, users are particularly encouraged to stay involved in that decision process so that EPA can incorporate practical measures into its decisions and Bulletins as early as possible.

Comment: Ease of use--EPA should use clear, consistent, plain-language statements and formats throughout all Bulletins and, in particular, in pesticide use restrictions (44 commenters). Use a pesticide's common, trade or brand name instead of active ingredient name in the table of pesticides (11 commenters).

Response: Bulletins will convey geographically specific pesticide use information to pesticide users, so it is crucial that they understand and can easily use the information the Bulletins present. EPA agrees that language, terminology, format, etc., must be as clear, concise, and uniform as possible. EPA has been working with other federal agencies, States, Tribes, and other stakeholders to revise and improve the Bulletins, especially the maps and tables of pesticide use restrictions, with the goal of achieving consistency and ease of use of all information presented.

Maintaining Bulletins and the information appropriate to each county where a geographically specific use limitation is needed will be a significant undertaking. EPA is disinclined to add to this undertaking the challenge of keeping current all the product names for each active ingredient subject to one or more Bulletins across the country. Therefore, EPA does not intend to include trade or product names in the Bulletins but instead intends to use the active ingredient name.

Comment: Maps and private lands--Suggestions varied for how EPA can make protection areas as specific as possible without infringing on individual landowners' privacy. The largest number of comments on this topic (14 commenters) concerned respect of private property rights in developing county maps. Thirteen commenters suggested that in cases where a listed species occurs only on privately owned lands, landowner agreements be used in lieu of publishing a Bulletin that would identify those lands.

Response: EPA agrees that it is important to respect the privacy of individuals. However, EPA is not in a position to enter into landowner agreements with all individuals regarding their use of pesticides. Further, concern regarding the enforcement of any such agreements if landownership changes is one of the many complex implementation issues that EPA would have to resolve to adopt such an approach. Additionally, while a species may be located only on lands owned by a single individual, use of pesticides adjacent to that land or upstream from a particular geographic location could also have effects on the listed species or its critical habitat. For these reasons, EPA does not intend to forego Bulletin development in favor of landowner agreements.

Comment: Maps and delineation of use limitation areas--Nine commenters said township-range-section designations alone, or in conjunction with natural and man-made landmarks and boundaries, should be used to delineate species protection areas. Nine other commenters said map locations alone, not natural boundaries, habitat types, etc., should be used because

those designations can result in larger restricted areas than warranted by sound science. Seven commenters said protection areas should be referenced by Geographic Positioning System (GPS)-compatible points. Eight commenters supported the use of narrative descriptions of listed species and/or habitat to explain use restrictions in a Bulletin.

Response: EPA acknowledges that State, Tribal and local situations greatly influence the most appropriate designation to use in producing maps and protection boundaries. The Agency will be flexible in its choices when preparing draft maps for State and Tribal input. EPA will use both natural and man-made boundaries as appropriate and necessary with the goal of identifying the geographic area where any use limitation applies but without unnecessarily enlarging that area.

Bulletins will generally contain a county map showing the geographic area associated with the protection measures, depending on the sensitivity of the species to other factors such as collection. Typically, maps will show a patterned or shaded area indicating where pesticide use must be limited to protect that species. Within patterned or shaded areas on the maps, the specific protection measures will generally be identified for each pesticide and the species being protected. Where species or habitat descriptions are helpful or necessary to identify use limitations, EPA will include that information in Bulletins. Also, where possible without causing further threat to a species, the Bulletins will provide a picture and description of the species. While it is EPA's intention to use geographic information systems to develop and produce the maps that will be included in Bulletins, we do not intend to provide specific GPS coordinates in the Bulletins.

Comment: Notifying users when a Bulletin applies--EPA requested comment on how the Agency could ensure that growers know they have the most recent Bulletins. Seven commenters said there must be a uniform mechanism for informing pesticide users of when a Bulletin is available; five of those commenters suggested computer-generated Bulletins at the time of sale as the appropriate mechanism. Three other commenters suggested placing a notice on EPA's web site.

Response: EPA has developed a uniform mechanism for notifying pesticide users when a Bulletin may apply to their pesticide application; that is, through placement of a generic statement on the pesticide label directing pesticide users to follow the Bulletin for their county if one is available. Pesticide users may access the appropriate Bulletin for their pesticide use in one of two ways: Either by checking EPA's web site, *http://www.epa.gov/espp*, or if Internet access is not available, users may determine whether a Bulletin exists for their pesticide use by calling 1–800–447–3813, and if a Bulletin is available it can be mailed to the caller. Pesticide users should check for availability of a relevant Bulletin no more than 6 months before applying a pesticide to ensure they are using the current Bulletin for the county.

Comment: Updating frequency and effective date of Bulletins--EPA requested comment on whether annual updating of the Bulletins is the appropriate frequency and, if so, what an appropriate effective date would be. Fifteen commenters said Bulletins should be updated annually. Other suggestions ranged from, simply, ''regular updating,'' to ''as soon as consultations are completed and use limitations put in place,'' to ''a 3–year schedule.'' Ten commenters said Bulletins also need to be dated so pesticide users can be assured they are using the current version of the Bulletin.

Response: It is not EPA's intent to constantly seek changes to product labels and make Bulletin changes. At the same time, EPA intends to maintain the ability to act on listed species and critical habitat issues when protection decisions are made or when a new body of data becomes available. EPA believes the best compromise between acting quickly to protect listed species and not engendering confusion with constant changes in label instructions can be reached by providing Bulletins via a web-based system, as described below. The generic statement on the label will direct pesticide users to follow the use limitations in a Bulletin applicable to their county and their pesticide application; pesticide users may generally obtain this information 6 months before the date on which they intend to apply the pesticide.

Bulletins will be available for viewing and printing on the web at *http://www.epa.gov/espp*. Those without access to the Internet may call EPA at 1–800–447–3813 to determine applicability and availability of a Bulletin. Bulletins will be printed and mailed upon request. Bulletins obtained either from the web or from EPA will indicate the time frame for which they apply.

Comment: EPA and the States and Tribes working together to improve the development of Bulletins--EPA proposed specific roles for States and Tribes that would include review of county maps; review of use limitations to protect species; determining the effectiveness of the program; and, at their discretion, development of alternative approaches for protecting listed species in the form of State or Tribal initiated plans. Several commenters supported this proposed approach, but expressed concern about having the resources to undertake such a program. One suggestion was to incorporate Bulletin development into performance partnership grant agreements.

Other comments received were not necessarily specific to Bulletin development, but still addressed how EPA, States and Tribes should work together to protect listed species. About 50 commenters said EPA should broadly define the Program goals and help develop a general process, but then allow programs to be fully developed and tailored at the State and Tribal level.

Response: Given the specifics of the program as articulated, EPA believes it will not result in significant additional resource needs on the part of States and Tribes. EPA will provide Bulletins via the web or through a toll-free number, thus eliminating the proposed role of the States and Tribes in Bulletin distribution. Enforcement actions will be carried out through existing methods of FIFRA inspection, investigation and enforcement, just as all pesticide use requirements are enforced. EPA is not requiring States, Tribes, local governments or others to participate in Bulletin review; rather, the Agency will provide an opportunity for review at appropriate points in the risk assessment process and prior to publishing Bulletins on the web. This cooperative activity may be incorporated into performance partnership grant agreements so that EPA and the States and Tribes can effectively negotiate resources and clearly define outputs and outcomes.

The ESPP continues to provide States and Tribes an opportunity to develop State or Tribal initiated plans. Again, these plans are not a requirement but an option in which they may choose to engage.

Comment: Bulletin Distribution--When the ESPP was proposed for comment, EPA had been developing a broad-based distribution plan for Bulletins and other ESPP information that was based on availability of both paper and electronic copies of Bulletins. A key factor in developing that plan was to make sources of Bulletins and other information convenient to pesticide

users. The overwhelming sense of more than 50 comments received on this topic was that Bulletins must be easily and readily accessible. About a dozen commenters preferred availability on the web, although concerns were expressed regarding web access and ease of printing (3 commenters), as well as possibly publicizing exact species locations when specific farms or ranches might be identified in county maps (5 commenters). Other suggested distribution mechanisms for paper copies of Bulletins included points of sale such as pesticide dealers, distributors and retail stores; State lead agencies; U.S. Department of Agriculture's Cooperative Extension Service; the Services; and applicator training programs.

Response: In the time since EPA proposed the ESPP, EPA's ability to utilize web-based technology has evolved and funding situations have changed. These factors, combined with the public comment on the proposal and EPA's desire to minimize label changes while providing timely protection to listed species, have led to EPA's decision to use a web-based system as the main route of Bulletin distribution. EPA believes web-based Bulletin distribution provides the best compromise between the time required to change product labels and being able to more quickly inform pesticide users of any required use restrictions to protect listed species or critical habitat. The Agency also believes such a system is more cost-effective than printing paper copies and will eliminate possible confusion about whether pesticide users have the current version of a Bulletin. Therefore, EPA will provide Bulletins via a web-based system or, if a pesticide user does not have access to the Internet, through calling a toll-free number, as described above.

3. *Labels and Bulletins.* EPA proposed to use a generic label statement that would be included on the labels of products for which pesticide use limitations were necessary to ensure protection of listed species. This generic statement would refer the pesticide user to further use limitations in a county-level Bulletin.

Comment: More than 110 commenters said mandatory protections for listed species must be on the pesticide label, not in a Bulletin or on a web site. Many indicated specific information they believed should be included on the label such as: The name of the species to be protected, what protections apply, where those protections apply, and penalties for failure to comply with the label restrictions. Eleven commenters said pesticide users should not have to go to more than one source to obtain compliance information. Seventeen commenters expressed some level of support for a generic label statement directing pesticide users, when necessary, to follow a Bulletin.

Response: EPA has considered again the feasibility and desirability of including all pertinent information regarding listed species protection on the actual pesticide product label itself. EPA continues to believe this approach is not feasible, would not result in better protection for listed species, and would by necessity be overbroad in terms of geographic areas in which limitations on pesticide use are necessary to protect listed species. EPA intends to provide protection for listed species while minimizing any unnecessary burden on pesticide users, as we believe was the intent of Congress in passing section 1010 of Public Law 100–478 (October 7, 1988). While geographically specific use limitations may certainly be described in text, such description could be very lengthy consisting of numerous coordinates of many geographic points. This type of information is more amenable to portrayal through graphic methods. Further, should changes be necessary as a result of additional species being listed etc., changes to the Bulletin could be accomplished more readily than further changes to a pesticide label. Therefore, by using Bulletins rather than the pesticide product label to relay the specific use limitations, protection will be more timely for the listed species.

4. *Enforcement.* For pesticide products determined to affect listed species or critical habitat, the Agency proposed that the product labels carry a statement directing users to follow the appropriate Bulletin in effect at the time of product application or that all Bulletins published by an annual date be in effect for 12 months. In either case, pesticide users who fail to follow provisions applicable to their pesticide application, whether that failure results in harm to a listed species or not, would be subject to enforcement under the misuse provisions of FIFRA (section 12(a)(2)(G)).

Comment: Liability and incidental take--Most of about 18 commenters in this area were concerned with liability and incidental take. Fourteen commenters said those who follow label instructions and accidentally harm a listed species should not be subject to any liability, and any enforcement of the ESPP should be done through FIFRA, not the ESA.

Response: The obligation of pesticide users under FIFRA to comply with a pesticide product's label will not change under the Program. Bulletins will be enforced as are pesticide labels since compliance with the Bulletins will be a labeling requirement. As for the ESA, the Services may under some circumstances issue what is called an ''incidental take statement'' which authorizes take of species under certain circumstances. If such a statement authorizes take that may result from the use of a pesticide in compliance with FIFRA, a pesticide user applying the pesticide consistent with the labeling would not be subject to enforcement action under the ESA for taking a listed species. However, if the Services have not authorized take by issuance of an incidental take statement, and take occurs from use of the pesticide, a pesticide user could be liable for take under section 9 of the ESA, regardless of whether they complied with the use requirements for the pesticide or not. In situations where EPA's analysis results in a determination that a pesticide's use is ''likely to adversely affect'' a species, EPA will be consulting with the Services. If the pesticide's use will not, in the opinion of the Services, result in jeopardy to the species, they may develop and issue an incidental take statement. In situations where EPA's analysis results in a determination that use of the pesticide with any use limitations in the Bulletin is ''not likely to adversely affect'' the species, further consultation with the Services may not occur. In these situations, there is by definition, no incidental take anticipated since the pesticide is ''not likely to adversely affect'' a species. Thus, while a pesticide user could be liable for take under the ESA of a listed species even when following all the appropriate use requirements, including those articulated through a Bulletin, this scenario is highly unlikely to occur.

5. *Enhanced monitoring.* EPA proposed several ways to evaluate the extent to which the ESPP is protecting and contributing to the conservation of listed species. EPA proposed to use existing monitoring and incident data more effectively, to monitor effectiveness of Bulletins after they have been used for a time, and to sponsor some limited terrestrial monitoring to better understand whether specific provisions in Bulletins were resulting in decreased potential for a listed species to be exposed at levels of concern.

Comment: Nearly 60 comments were received on this broad area of discussion. More than 30 commenters said any monitoring data should be used either to refine the endangered species risk assessment or to minimize the areas affected by pesticide use limitations designed to protect listed species or

critical habitat. Ten commenters said monitoring must involve the States, be done at the State level or be done by the States. In response to our proposal to augment monitoring data with targeted terrestrial residue monitoring, possibly to include post-registration monitoring by registrants or others, 13 commenters objected to registrants playing a role in any monitoring because of potential conflicts of interest or the added burden to the companies, while five commenters said the Services should play some role in monitoring, ranging from oversight of others to performing the monitoring themselves. Six commenters questioned the utility and applicability of incident data in risk assessments, largely because of quality-control issues and the lack of a definition of best available data. Nine commenters agreed that EPA should make better use of existing monitoring programs, rather than adding additional monitoring schemes.

Response: Given the comments received, the potential of budget considerations at the federal, State and Tribal levels of government, and the need to ensure that any new monitoring undertaken by the federal government is well defined and considers input of stakeholders, this notice does not include an EPA plan for new terrestrial monitoring. However, this is an area that EPA will continue to explore as the program moves forward, to determine whether it has broad utility in evaluating the effectiveness of the program.

EPA will continue to consider and improve upon its use of existing monitoring and incident data in its analyses of potential effects to listed species. EPA continues to believe that the result of monitoring programs generally do not provide sufficient information on which to base a regulatory decision unless those programs are specifically designed to answer the particular questions being posed. However, both monitoring and incident data may, to varying degrees based on the quality of the information and the confidence in the information, be of value in characterizing the extent of potential exposure of a listed species to a pesticide. EPA will consider incident information reported to its incident monitoring programs and monitoring data conducted under the U.S. Geological Survey's National Water Quality Assessment Program and monitoring data submitted to EPA's Office of Water under the Clean Water and Safe Drinking Water Acts, to help characterize the extent of potential risk to listed species. Additionally, if OPP is aware of monitoring programs conducted by OPP's State or Tribal regulatory partners, EPA will assess the utility of the data resulting from those programs and use those data, as appropriate. Finally, there may be specific targeted monitoring conducted by the regulated industry at EPA's request. These data too will be used, as appropriate, to help characterize the extent of potential exposure of listed species to pesticides.

6. *Public participation.* The proposal articulated EPA's commitment to appropriate public participation and outlined three general stages at which public input could be of particular value: During analysis of a pesticide's potential effects, subsequent to a determination of potential effect, and subsequent to development of a draft Biological Opinion on the part of the Services, if appropriate. EPA proposes that when any of these phases corresponds with a public participation phase under EPA's ongoing review processes (e.g., reregistration), that ongoing public process will be used.

Comment: Virtually all commenters agreed that more opportunities must be available for public participation in all areas of listed species protection, from the initial risk assessment through determining mitigations where needed and developing appropriate Bulletins.

Response: Endangered species risk assessment processes and risk management decisions are being incorporated into EPA's existing processes of registration, reregistration and registration review, and will generally be afforded the same level of transparency and opportunity for comment as provided in those processes. EPA has discussed public participation with its Federal Advisory Committee (the Pesticide Program Dialogue Committee) on several occassions and will continue to work with that committee to further define specific aspects of public participation relative to listed species concerns. EPA is committed to a transparent and participatory process to the extent that can be accomplished in a manner that continues to allow EPA to meet its statutory obligations.

7. *Implementation timing.* EPA solicited comment on ways to time the release of Bulletins to minimize the potential disruption to pesticide users during a growing season. Among other details, the Agency proposed to begin reviewing existing Bulletins within 6 months of publication of this final Program notice to ensure they are still valid, and to update each Bulletin no more than once annually.

Comment: Eight commenters said Bulletins should be updated annually, in time for growers to plan for the upcoming season. Suggestions for when to update them ranged from the end of the fall growing season to January of each year.

Response: Given a web-based approach to Bulletin production and distribution as articulated in this Notice, EPA intends to update Bulletins as protection decisions are made or when a new body of data becomes available. However, this web-based system is designed so that a pesticide user may obtain any applicable pesticide use limitations for a particular use in a particular location, up to 6 months prior to the application date. EPA believes this 6–month window will allow adequate time in most cases, for a pesticide user to plan their application of a pesticide. Further, EPA believes that this will allow protections to be implemented in a more timely manner than if EPA were to select one date per year on which all changes would become effective.

All of the submitted comments are available in docket ID number OPP–2002–0311, as described in Unit I.B.

III. The Endangered Species Protection Program Field Implementation

EPA's implementation plan is based on two goals. The first is to provide appropriate protection to listed species and their designated critical habitat from potential harm due to pesticide use. The second is to avoid placing unnecessary burden on pesticide users and agriculture. The following sections describe the elements of EPA's approach to implementing listed species protections where such protections are deemed necessary.

EPA's plan as described in this document is not a legally binding regulation and EPA may decide to revise, amend, or act at variance with the terms of this document without providing notice and comment under section 553 of the Administrative Procedure Act.

A. Scope of the ESPP

All pesticide products that EPA determines ''may affect'' a listed species or its designated critical habitat may be subject to the ESPP. The scope potentially includes pesticide actions under sections 3, 5, 18, and 24(c) of FIFRA.

1. *Indoor products determination.* EPA has determined that pesticide products bearing label directions only for use indoors, and where the applied pesticide remains indoors, will not result in exposure to listed species. Therefore, these products will have ''no effect'' on listed species and would not

be subject to the ESPP. Indoor use includes application within transport vehicles and within any structure with enclosed walls and a roof, such as buildings, greenhouses, outbuildings, etc. This ''no effect'' determination does not apply to a pesticide that is applied indoors, but could expose outdoor environments (such as pesticides applied in cooling towers or used as cattle dips). Whether these products result in a ''may affect'' determination will be assessed on a case-by-case basis. If a ''may affect'' determination is made for these products, they would be subject to the ESPP.

2. *FIFRA section 18s.* Section 18 of FIFRA authorizes EPA to issue ''emergency exemptions'' to States and federal agencies to use a pesticide for an unregistered use for a limited time if EPA determines that emergency conditions exist. While EPA will endeavor to resolve concerns regarding listed species prior to taking an action, that may not always be possible for section 18s, which by their very nature are time critical, especially those involving public health emergencies. When submitting a section 18 request to EPA, States, Tribes and federal agencies will be expected to demonstrate they have made a credible effort to identify and address endangered species issues. The more thorough the approach of the submitter, the more likely it will be that EPA can conduct its endangered species assessment and consult with the Services, as necessary, within the time constraints for review of FIFRA section 18 applications. However, under the Counterpart Regulations, the Services have indicated that emergencies under section 18 of FIFRA may be treated as ''emergencies'' under the Services' consultation regulations. As a result, if EPA cannot perform a comprehensive endangered species assessment or, if applicable, initiate and complete formal consultation prior to the emergency, EPA may use the emergency informal consultation procedures described in the Services' Endangered Species Consultation Handbook (Ref. 5) and complete any necessary formal consultation as soon as practicable after the emergency.

B. Overall Approach

The task of assessing pesticide registrations' potential effects to listed species has the potential to be quite significant. There are more than 900 active ingredients used in more than 19,000 formulated products registered under FIFRA. Each product is registered for one to potentially many use sites. Each use site and its specific use instructions have different potentials to affect a listed species or critical habitat. With more than 1,200 listed species in one or more of over 2,000 counties throughout the United States, the job of determining what use patterns of each pesticide have the potential to affect which species, is not a task that can be accomplished quickly.

EPA's overall strategy is to address listed species concerns within the context of the pesticide registration, reregistration, and registration review processes. As explained in the Agency's risk assessment Overview Document (Ref. 1), endangered species assessments are, essentially, geographic and biological refinements of the core environmental risk assessment performed to support a registration, reregistration or, in the future, registration review decision. Since the refinements to assess the potential effects of a pesticide's use to a listed species stem from this core assessment, and since that core assessment feeds into a decision regarding the registration status of a pesticide, it seems both logical and efficient to develop processes to accomplish the endangered species refinements within the context of the broader activities of registration, reregistration and, in the future, registration review. FIFRA section 3(g) requires the Agency to periodically review pesticide registrations. After establishing procedures for registration review, EPA's goal is to review the registration of each pesticide every 15 years. The purpose of this review is to assess whether a pesticide continues to meet FIFRA requirements for registration. During a pesticide's registration review, the Agency would, among other things, determine whether endangered species assessments must be conducted. If so, such assessments would generally be conducted as part of the pesticide's registration review where possible.

While it is OPP's intent to accomplish endangered species assessments through these processes, there may be situations in which the potential risks to a listed species are addressed apart from these processes. For example, there may be situations in which new, valid information becomes available on existing pesticide registrations, or on a listed species, that will compel EPA to re-evaluate its determinations and reinitiate consultation, as appropriate, outside those existing processes. In those circumstances, case-by-case decisions will be made on whether to review a pesticide prior to its scheduled review time.

C. Results of Endangered Species Assessments: ''Effect Determinations''

The result of EPA's assessment of a pesticide use's potential effects to listed species is an effects determination. This determination will generally be included in the ecological risk assessment conducted to support a decision regarding the registration status of the pesticide (see Unit III.B.). EPA will make one of three determinations regarding the potential of a pesticide to have an effect on listed species: (1) The pesticide will have ''no effect'' on the species, (2) the pesticide ''may affect but is not likely to adversely affect'' the species, or (3) the pesticide is ''likely to adversely affect'' the species. The processes by which these determinations are made are described in the Agency's Overview Document (Ref. 1). Each determination may relate to a specific use of a particular pesticide and a particular listed species. Based on these determinations and any required consultation under section 7(a)(2) of the ESA, some pesticides will likely require changes to their use instructions in particular geographic areas to ensure protection of listed species.

Decisions that change the use instructions on a pesticide and subsequent implementation of those changes can occur in several ways. If EPA's listed species assessment results in a determination that the pesticide ''may affect but is not likely to adversely affect'' or that it is ''likely to adversely affect'' a listed species, EPA will address its consultation obligations as described in the Services consultation regulations at 50 CFR part 402, unless the applicant or registrant adopts changes to product labeling that allow EPA to make a ''no effect'' determination for the pesticide. If EPA makes a ''not likely to adversely affect'' determination for the pesticide under the procedures of the Counterpart Regulations at 50 CFR part 402, subpart D, no further consultation or written concurrence from the Services is required. EPA may, however, choose to utilize the informal consultation procedures of the Services regulations applicable to all federal agencies by seeking the written concurrence of the Services on this finding. The result of formal consultation following a ''likely to adversely affect'' determination will be a Biological Opinion issued to EPA by the Services. This Opinion will contain the Services' determination of whether the pesticide's use could jeopardize the continued existence of the species. If the Services believe that the action will likely jeopardize listed species or destroy or adversely modify

designated critical habitat, then the Services will include changes to the pesticide registration in the Biological Opinion that EPA may consider adopting to avoid jeopardizing the continued existence of listed species or the destruction or adverse modification of designated critical habitat (called reasonable and prudent alternatives). If the Services determine that jeopardy to the species will not result from use of the pesticide and authorizes incidental take of the species, the Biological Opinion will contain measures that must be followed in order for any take of the species to be authorized by the ESA (reasonable and prudent measures). These alternatives and measures may form the basis for specific changes to the use instructions for a particular pesticide in a particular geographic location.

Finally, EPA may identify a potential risk to a listed species and request public input to suggest ways in which the pesticide use instructions could be modified to reduce the potential risk. This public input could form the basis for EPA exploring a variety of potential changes to the pesticide's use in order to ensure it is in compliance with the ESA.

By their very nature, the geographic range of each listed species and the area required to support each species is usually quite limited; therefore, changes to use instructions to protect listed species will also, where appropriate, be geographically limited even for a particular use of the pesticide. For example, in order to ensure protection of a listed species, EPA may determine that use of a pesticide for a particular crop need be changed only in a small geographic area within a county, rather than for the crop nationwide.

When changes to a pesticide's use are necessary to protect a listed species, and those changes are geographically specific, EPA intends to implement those changes through Endangered Species Protection Bulletins (Bulletins). The Bulletins will be at a county scale, with specific geographic areas indicated within the county where use limitations exist. In these cases, the Bulletin will be referenced on the pesticide label by a generic statement that tells the pesticide user that the product may harm some endangered or threatened species or their critical habitat; that the user must follow the use limitations in the Bulletin for the county in which they intend to apply the pesticide; and how they may access the Bulletin for their county and pesticide use.

D. Endangered Species Protection Bulletins and County Bulletins

1. *Endangered Species Protection Bulletins (Bulletins).* If as a result of EPA's review of a pesticide, or as a result of consultation with the Services, geographically specific use limitations are necessary to ensure a pesticide registration complies with the ESA and FIFRA, those use limitations will be relayed to pesticide users through Bulletins referenced on the labels of affected pesticide products. Bulletins will become enforceable use requirements once referenced on the pesticide label.

Endangered Species Protection Bulletins will:

- Identify the species of concern.
- Name the active ingredient(s) for which use limitations apply.
- Describe the use limitation necessary for protection of the species. Where species or habitat descriptions are helpful or necessary to identify use limitations, EPA will also include this information.
- Contain a county map on which is shown the specific geographic area in which the use limitations apply, depending on the sensitivity of the species to other factors such as collection. Typically, maps will show a patterned or shaded area indicating where pesticide use must be modified to protect the listed species and to ensure the pesticide user is not violating the misuse provisions of FIFRA. Within patterned or shaded areas on the maps, the specific use limitations will be identified for the pesticide and the species being protected.
- Where possible without causing further threat to a species, provide a picture and description of the species.

2. *Voluntary County Bulletins.* There are a number of county bulletins that EPA has developed in the past based on consultations with the Services. These county bulletins have been posted on EPA's web site for voluntary use by pesticide applicators but are not required to be followed to comply with the pesticide use requirements. EPA is pursuing whether a method exists, short of a full re-evaluation of each pesticide's use included in existing county bulletins, to validate the information contained in these voluntary county bulletins. If that proves to be possible, EPA intends to pursue public comment on the process before finalizing the method. EPA then intends to incorporate the validated information into new Endangered Species Protection Bulletins, as resources permit. EPA would then request that applicants and registrants reference these Bulletins on their affected product labels using the label statement identified in Unit III.E.

3. *Access to Endangered Species Protection Bulletins.* Endangered Species Protection Bulletins will be available for printing on the web at *http://www.epa.gov/espp.* EPA is developing a web-based Bulletin-retrieval system that will enable pesticide users to enter basic information such as their state, county, and month of anticipated pesticide use. The system will then display the appropriate Bulletin for printing. The printed Bulletin will display the month for which it is valid. These Endangered Species Protection Bulletins will be available on a distinct web site that will be referenced on the pesticide label to avoid possible confusion with the existing, voluntary county bulletins that will remain available for public reference but do not contain enforceable use limitations.

Bulletins will generally be available 6 months in advance of their effective date. Pesticide users should therefore check for availability of a relevant Bulletin no more than 6 months before applying a pesticide to ensure they are using the current Bulletin for the county.

Those without access to the Internet may call EPA at 1–800–447–3813 to determine applicability and availability of Endangered Species Protection Bulletins. If a Bulletin does apply, it will be printed and mailed upon request.

E. Pesticide Label Language

When geographically specific use limitations are necessary to ensure legal use of a pesticide product will not result in jeopardy to the species, EPA will generally seek to ensure that registrants include the following statement on the product label at the beginning of the product's Directions for Use:

ENDANGERED SPECIES PROTECTION REQUIREMENTS

This product may have effects on federally listed threatened or endangered species or their critical habitat in some locations. When using this product, you must follow the measures contained in the Endangered Species Protection Bulletin for the county or parish in which you are applying the pesticide. To determine whether your county or parish has a Bulletin, and to obtain that Bulletin, consult *http://www.epa.gov/espp/*, or call 1-800-447-3813 no more than 6 months before using this product. Applicators must use Bulletins that are in effect in the month in which the pesticide will be applied. New Bulletins will generally be available from the above sources 6 months prior to their effective dates.

Absent the appropriate label statement, EPA believes a pesticide

generally will not meet the FIFRA risk/benefit standard. EPA may, therefore, initiate cancellation or denial proceedings under FIFRA against any product for which EPA has determined this label statement is necessary and for which the applicant or registrant refuses to adopt such restrictions.

Note that a more specific web-site address will be included in this language once a permanent web address is secured for enforceable Endangered Species Protection Bulletins.

F. Enforcement

Pesticide users who fail to follow label provisions applicable to their pesticide application, whether that failure results in harm to a listed species or not, would be subject to enforcement under the misuse provisions of FIFRA (section 12(a)(2)(G)). Products that do not bear appropriate endangered species labeling may be subject to enforcement under the misbranding provisions of FIFRA (section 12(a)(1)(E)). Absent an incidental take statement issued by the Services that authorizes take that may occur from the use of a pesticide consistent with its labeling, users maintain liability under section 9 of the ESA for any take that occurs as a result of pesticide application, regardless of whether label provisions were followed. While enforcement actions under FIFRA are brought by EPA and the States, enforcement of the ESA is the responsibility of the Services.

G. Public Participation

1. *General.* EPA has encouraged the involvement of federal agencies, States, Tribes and members of the public throughout the development of the ESPP and will continue to provide opportunities for public participation. EPA intends the ESPP to be as flexible as possible and to modify it as necessary to achieve the goals of protecting listed species and minimizing the impact on pesticide users. The ongoing program will meld its components of public participation with existing practices in the registration, reregistration, and registration review processes. The processes for public participation during registration and registration review are under development. Reregistration generally is a four- or six-phase process and generally provides one or two formal opportunities for public input.

There are three major phases of a listed species assessment that may provide opportunity for public input: Prior to a ''may affect determination'' by EPA; identifying potential mitigation; and prior to issuance of a Biological Opinion to EPA by the Services. EPA will generally engage the public in each of these phases as outlined below. When any of these phases corresponds with a public participation phase under EPA's ongoing review processes (e.g., reregistration), that ongoing public process generally will be used.

In general--

• *Prior to a ''may affect determination.''* During the risk assessment process, anyone may provide additional or new information for the Agency to consider. Of particular use would be information on local use practices and use site locations.

• *Potential mitigation.* Provide suggestions on use practice changes, how certain changes may impact the pesticide user community, and input on risk mitigation scenarios.

• *Draft Biological Opinion.* If EPA must formally consult with the Services, after the Services issue a draft Biological Opinion, EPA will welcome input from State, Tribal and local governments on draft reasonable and prudent measures and alternatives. The purpose of this review would be to determine whether the alternatives or measures can be reasonably implemented and whether there are different measures that may provide adequate protection but result in less impact to pesticide users. The Agency will consider this input in developing its response to draft Biological Opinions.

2. *Role of the States and Tribes.* States and Tribes will continue to be integral to the success of the ESPP. Local, State and Tribal circumstances may influence the effectiveness of different approaches to listed species protection; therefore, local, State and Tribal governments may be afforded specific opportunities for Bulletin review. Also, at their discretion, States and Tribes may initiate alternative approaches for protecting listed species (Unit III.H.) that EPA could adopt as the EPA approach in that jurisdiction. States and Tribes may also assist in determining the effectiveness of the ESPP via enforcement and inspection activity.

Opportunities for State and Tribal review of Bulletins may include:

• *Review of maps.* States and Tribes generally may be requested to provide input to the Agency on maps that will be incorporated into Endangered Species Protection Bulletins, to accomplish several things. First, accuracy of the maps is key to success of relaying information to pesticide users. Therefore, States and Tribes will be requested to provide feedback on draft maps relative to whether they accurately depict landmarks, rivers, roads, etc. Further, State and Tribal input on how best to characterize use limitation areas on the maps will be sought. For example, some States believe that their pesticide users would be best served by designating limitation areas based on township-range-section mapping, while other States believe their pesticide users would prefer designations based on natural and man-made landmarks such as rivers, roads, and railways.

• *Review of use limitations to protect species.* States and Tribes also will be requested to provide input to the Agency on any potential use limitations for species protection. The purpose of this review would be for the Agency to ascertain, based on local conditions, whether specific use limitations could be implemented. States and Tribes will also be sources of input on the technological and economic feasibility of implementing any proposed use limitations.

3. *Role of pesticide registrants.* As with any potential change to a pesticide product label, the registrant of a product for which it has been determined the generic endangered species statement needs to be included, will have an opportunity to review the specific use limitations that may be included in the Bulletins, prior to Bulletin issuance. If once a product is labeled with the generic statement, changes in the Bulletin which would affect that product's use are necessary, the registrant will have an opportunity to review the changes prior to issuance. Further, the registrants retain any rights they may have under FIFRA, regarding EPA's determination that use of the product needs to be modified.

EPA will publish specific details of this public participation process on its web site, *http://www.epa.gov/espp*, as they are developed and refined.

H. State- and Tribal-initiated Plans

States and Tribes may develop and propose plans for their specific involvement in protecting listed species beyond the involvement outlined in this Notice. For example, such a plan could include varying provisions for how use limitations are articulated in a Bulletin; actual development of maps for inclusion in Bulletins; provisions for specific information a State or Tribe may provide to EPA to consider during its risk assessment process (for example, specific information regarding geographic location of certain crop types); or could recommend specific approaches that EPA could use to protect listed species in a specific area, such as State-administered land owner agreements.

If such plans are submitted by a State or Tribe, EPA will review the plan to

ensure the provisions of the plan can be implemented by EPA through the labeling and Bulletin approach discussed in this Notice. EPA will also determine whether the Services need to be consulted on the contents of the plan before EPA adopts the plan. After the necessary reviews EPA will approve or disapprove the plan. If approved, EPA would then adopt it and could require, through Bulletins, that users comply with the requirements of the plan, as appropriate.

An alternative plan may be submitted to EPA at any time. However, once the federally initiated actions are implemented within an area, those requirements will be effective in that area until the alternative plan is approved for implementation and EPA implements the plan through changes to the appropriate Bulletins. Section 24(a) of FIFRA reserves to States the authority to impose different requirements on registered pesticides provided they do not permit any sale or use prohibited by FIFRA. Accordingly, this Notice is not intended to modify any State authority to impose additional State requirements regarding listed species.

I. Monitoring

EPA is committed to improved use of existing monitoring data in our risk assessments. Federal and State budget outlooks make it important that data being collected through appropriate sources be used to the fullest extent possible to maximize efficiencies and minimize costs. EPA will continue to use, in the most effective manner possible, the information being obtained by the U.S. Geological Survey to detect pesticides in surface water and ground water, information provided to EPA's Office of Water under the Clean Water and Safe Drinking Water Acts, and State- or Tribal-level ground water or surface water monitoring resulting from State or Tribal pesticide program efforts where those results are known to OPP. EPA will also use the technical data identified during ESA section 7 consultations with the Services to assist in determining if pesticide residues are occurring at levels of concern in the environment. Where appropriate terrestrial monitoring is known to EPA, that too will be used in the most effective manner possible, to inform EPA's assessments.

EPA will continue and improve upon its cooperation with the Services, States, Tribes, and others to use reported incidents in which pesticides may have had an impact on listed species and critical habitat. EPA has been working with FWS field offices throughout the country, as well as other federal and State agencies, to ensure that EPA has the best possible information on incidents. EPA's Environmental Fate and Effects Division maintains an Ecological Incidents Information System to house and retrieve this information. EPA also gathers incident information from registrant reports that are required to be submitted under FIFRA section 6(a)(2).

EPA also intends to develop a process for monitoring the effectiveness of Bulletins after the Program has been in effect for some time. At that time, the Agency will solicit public comment on ways to determine whether Bulletins are effective at protecting listed species and critical habitat.

J. Implementation Timing

Endangered Species Protection Bulletins will be effective and enforceable upon reference to them on a product label. EPA will be establishing a web site prior to enforceable label references appearing on products in the market place, that will allow pesticide users to determine the appropriate Bulletin to follow, if any, as described in Unit III.D.

IV. References

All references are available for public review in the public docket as described in Unit I.B. The references used in this document are:

1. U.S. Environmental Protection Agency. January 23, 2004. Overview of the Ecological Risk Assessment Process in the Office of Pesticide Programs, U.S. Environmental Protection Agency-Endangered and Threatened Species Effects Determinations (*http://epa.gov/espp/consultation/ecorisk-overview.pdf).*

2. U.S. Environmental Protection Agency. 2002. Process for Assessing Potential Risks to Endangered and Threatened Species and Consultation with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service.

3. U.S. Department of the Interior, Fish and Wildlife Service; and U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service. August 5, 2004. Joint Counterpart Endangered Species Act Section 7 Consultation Regulations; Final Rule. 69 FR 47732, codified at 45 CFR part 402.

4. U.S. Environmental Protection Agency; U.S. Department of the Interior, Fish and Wildlife Service; and U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service. August 2004. Alternative Consultation Agreement for Implementation of Optional Alternative Consultation Procedures (ACA) (*http://www.epa.gov/espp/consultation/final-aca.pdf).*

5. U.S. Fish and Wildlife Service and National Marine Fisheries Service. March 1998. Endangered Species Consultation Handbook, Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act (*http://www.fws.gov/endangered/consultations/s7hndbk/s7hndbk.htm.)*

6. Letter of January 26, 2004 from Steve Williams, U.S. Fish and Wildlife Service and William Hogarth, National Marine Fisheries Service to Susan B. Hazen, U.S. Environmental Protection Agency (http://www.fws.gov/endangered/consultations/pesticides/evaluation/pdf).

List of Subjects

Environmental protection, Pesticides, Endangered species.

Dated: October 25, 2005.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 05–21838 Filed 11–1–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7992–9]

Safe Drinking Water Act Determination; Underground Injection Control Program, Determination of Indian Country Status for Purposes of Underground Injection Control Program Permitting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of prospective determination.

SUMMARY: EPA must determine whether any of the approximately 160 acres of land located in the southeast portion of Section 8, Township 16N, Range 16W, in the State of New Mexico, is part of a dependent Indian community under 18 U.S.C. 1151(b) and, thus, considered to be ''Indian country.'' This determination is necessary in order to establish whether EPA or the New Mexico Environment Department is the appropriate agency to issue a particular underground injection control permit under the Safe Drinking Water Act. EPA is seeking comments and information from the public and all interested parties regarding the possible Indian country status of this land and is

considering whether to hold a public hearing on the matter.

DATES: Comments and information on this matter, and any request that a public hearing be held, must be received by January 3, 2006. EPA will consider all timely comments and information that pertain to the Indian country status of the land in question.

ADDRESSES: Written comments should be submitted to David Albright, Ground Water Office Manager, at U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, Mail Code: WTR–9, San Francisco, CA 94105. You may also submit comments by fax at 415.947.3549 or by e-mail at *albright.david@epa.gov*.

FOR FURTHER INFORMATION CONTACT: David Albright, at *albright.david@epa.gov*, or 415.972.3971.

SUPPLEMENTARY INFORMATION: Hydro Resources, Inc. (HRI) proposes to operate a uranium in-situ leach mine on an approximately 160-acre parcel of land located in the southeast portion of Section 8, Township 16N, Range 16W in the State of New Mexico (''Section 8 land''). HRI must apply for and receive an underground injection control (UIC) permit under the Safe Drinking Water Act (SDWA) to conduct its mining activities. The State of New Mexico has been authorized by EPA to administer the SDWA UIC program in the State, but that authorization does not extend to Indian country. Due to the State's lack of authorization in Indian country and as a result of a court decision discussed below, EPA must determine whether or not the Section 8 land is Indian country as defined by 18 U.S.C. 1151. EPA is seeking comments and information from the public and all interested parties regarding the Indian country status of the land HRI intends to use for its mining activities. Additionally, recognizing the U.S. Department of the Interior's expertise in these matters, EPA is soliciting the views of and working with the Department.

In the late 1980s, HRI sought an UIC permit for its property located within Section 8. The land is located in an area commonly referred to as the ''Eastern Agency of the Navajo Nation'' and the Navajo Nation has historically asserted that the land in question is a dependent Indian community. After considering materials submitted by the Navajo Nation and the New Mexico Environment Department (NMED), EPA determined that the Indian country status of the Section 8 land was in dispute and, thus, that EPA would be the appropriate agency to issue the SDWA UIC permit. The State of New Mexico and HRI challenged EPA's determination with respect to the Indian country status of the land in question. In 2000, in *HRI* v. *EPA*, 198 F.3d 1224 (10th Cir. 2000), the United States Court of Appeals for the Tenth Circuit upheld EPA's decision to implement the UIC program throughout HRI's Section 8 land because the Indian country status of that land was in dispute. The Court remanded the matter to EPA to make a final administrative decision on the Indian country status of the disputed land.

Recently NMED received a request from HRI for an UIC permit to operate a uranium in-situ leach mine in Section 8. As a result, NMED has formally requested that EPA make a decision on the Indian country status of the Section 8 land. EPA's decision whether the land at issue is Indian country will determine whether EPA or NMED is the appropriate agency to consider the permit request from HRI.

The United States Supreme Court in Alaska v. Native Village of Venetie Tribal Government, 522 U.S. 520 (1998), identified two requirements for determining whether land constitutes a dependent Indian community under 18 U.S.C. 1151(b): (1) Whether land has been validly set aside by the Federal government for the use of Indians and (2) whether that land is subject to federal supervision. Additionally, the court in HRI v. EPA noted that, prior to Venetie, the Tenth Circuit Court of Appeals required a community of reference determination as the first step in determining a dependent Indian community. It also concluded that, because the Supreme Court in Venetie was not presented with the question of the proper community of reference and did not speak directly to the propriety of a community of reference analysis, Tenth Circuit precedent continues to require a community of reference analysis.

To ensure EPA has all possible relevant information for making its determination on the Section 8 land status, EPA requests that the public submit information on the following items: the nature of the area in question; Indian and non-Indian land uses; relevant aquifer uses; land ownership patterns; use of area infrastructure and services by Indians and non-Indians; the relationship of inhabitants in the area to Indian tribes and to the Federal government; activities of government agencies toward the area; elements of cohesiveness manifested either by economic pursuits in the area, common interests, or needs of inhabitants supplied by the locality; whether any lands have been set apart for the use, occupancy, and protection of dependent Indian peoples; whether that land is subject to Federal supervision; and any other relevant information that might assist EPA in making its determination.

EPA welcomes written comments and information from the public and interested parties on whether the Section 8 land constitutes a dependent Indian community in whole or in part. At this time, EPA is limiting its analysis to the question of whether the Section 8 land is a dependent Indian community and, thus, Indian country and will not consider any issues, information, or comments regarding the permitting of mine operations on the Section 8 land. As part of the determination process, EPA is also consulting with the Navajo Nation.

If there is sufficient public interest and a request is made, EPA may consider holding a public hearing to elicit further input from the public on this matter. Such a hearing would not constitute a formal adjudication, but rather would provide an informal opportunity for the public and interested parties to provide additional comments and information.

Dated: October 24, 2005.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 05–21822 Filed 11–1–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

October 19, 2005.

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 Act (PRA) comments should be submitted on or before December 2, 2005. If you anticipate that you will be submitting PRA 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 Leslie F. Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.* If you would like to obtain or view a copy of this new or revised information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Leslie F. Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0329.

Title: Equipment Authorization—Verification, 47 CFR § 2.955.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions; Business or other for-profit entities.

Number of Respondents: 5,655.

Estimated Time per Response: 18 hours (avg.).

Frequency of Response: Recordkeeping; One-time and on occasion reporting requirements; and Third party disclosure.

Total Annual Burden: 101,790 hours.

Total Estimated Cost: $1,131,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Commission rules 47 CFR Parts 15 and 18 require manufacturers of radio frequency (RF) equipment devices to gather and retain technical data on their equipment to verify compliance with established technical standards for each device operated under the applicable Rule part. Testing and verification aid in controlling potential interference to radio communications. The information may be used to determine that the equipment marketed complies with the applicable Commission rules and that the operation of the equipment is consistent with the initially documented test results. The information is essential to controlling potential interference to radio communications.

OMB Control Number: 3060–0812.

Title: Assessment and Collection of Regulatory Fees.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions, and State, local, or tribal governments.

Number of Respondents: 4,500.

Estimated Time per Response: 0.5 hours.

Frequency of Response: Recordkeeping; On occasion and one-time reporting requirements.

Total Annual Burden: 2,475 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In accordance with the Telecommunications Act of 1934, as amended, and Congressional requirements, the FCC is required to assess and collect regulatory fees from licensees and regulatees in order to recover its costs incurred in conducting enforcement, policy and rulemaking, international, and user information activities. The purpose of the requirements are to facilitate: (1) the statutory provisions that ''non-profit entity'' may be exempt from payment of regulatory fees, and (2) the FCC's ability to audit regulatory fee payment information from all regulatees. The FCC must estimate as accurately as possible the number of payment units and distribute the costs to develop a Regulatory Fee Schedule. These estimates must be adjusted to account for any licensee or regulatee that is exempt from payment of regulatory fees. Therefore, the FCC requires all licensees and regulatees, which claim exemption as a non-profit entity, to provide one-time documentation sufficient to establish their non-profit status. Additionally, any newly licensed or operating non-profit entities must submit documentation of their exempt status within 60 days of receipt of the license, authorization, permit, or commencing operation. Further, the FCC is requesting that it be similarly notified if there are any status changes. Documentation that supports a regulatee's exempt status as a non-profit includes, but is not limited to, an Internal Revenue Service (IRS) Determination Letter, a state charter granting non-profit status, proof of church affiliation, articles of incorporation, and 501(c)(3) letters, *et al.* The FCC may require licensees to submit business data they used to calculate their regulatory fee payments to facilitate the Commission's audit of regulatory fee payment compliance.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–21469 Filed 11–1–05; 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

October 19, 2005.

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 No. 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 January 3, 2006. 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: You may submit your Paperwork Reduction Act (PRA)

comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to: *PRA@fcc.gov.* To submit your comments by U.S. mail, mark it to the attention of Leslie F. Smith, Federal Communications Commission, 445 12th Street, SW., Room 1–A804, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Leslie F. Smith at 202–418–0217.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0398.

Title: Equipment Authorization Measurement Standards, 47 CFR §§ 2.948 and 15.117(g)(2).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 320.

Estimated Time per Response: 5 to 30 hours.

Frequency of Response: Recordkeeping; One-time, three year, and on occasion reporting requirement; Third party disclosure.

Total Annual Burden: 9,100 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Commission uses this information to ensure that data accompanying all requests for equipment authorization are valid, and that proper testing procedures are used. Testing ensures that potential interference to radio communications is controlled, and if necessary, the data may be used for investigating complaints or harmful interference, or for verifying the manufacturer's compliance with FCC rules. The Commission eliminated the necessity for manufacturers to file UHF noise figure data documenting the performance of TV receivers tested and marketed in the U.S. in ET Docket 95–144.

OMB Control Number: 3060–0436.

Title: Equipment Authorization—Cordless Telephone Security Coding.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 100.

Estimated Time per Response: 1.5 hours.

Frequency of Response: Recordkeeping; One time and on occasion reporting requirements; Third party disclosure.

Total Annual Burden: 150 hours.

Total Estimated Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Commission requires that cordless telephone security features protect the public switched telephone network from unintentional line seizure and telephone dialing. These features prevent unauthorized access to the telephone line, the dialing of calls in response to signals other than those from the owner's handset and the unintentional ringing of a cordless telephone handset. Use of the cordless telephone security features reduces the harm caused by some cordless telephones to the ''911'' Emergency Service Telephone System and the telephone network in general.

OMB Control Number: 3060–0387.

Title: Section 15.201(d), On Site Verification of Field Disturbance Sensors.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 200.

Estimated Time per Response: 18 hours.

Frequency of Response: Recordkeeping; One and on occasion reporting requirements; Third party disclosure.

Total Annual Burden: 3,600 hours.

Total Estimated Cost: $40,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Commission rules permit the operation of field disturbance sensors in the low VHF region of the spectrum. In order to monitor non-licensed field disturbance sensors operating in the low VHF television bands, a unique procedure for on-site equipment testing of the systems is required to ensure suitable safeguards for the operation of these devices. Data are retained by the holder of the equipment authorized/issued by the Commission and made available only at the request of the Commission.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–21470 Filed 11–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

October 25, 2005.

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 Act (PRA) comments should be submitted on or before December 2, 2005. If you anticipate that you will be submitting PRA 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.* If you would like to obtain or view a copy of this new or revised information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

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 No.: 3060–0813.

Title: Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 47,031.

Estimated Time Per Response: 1–5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 198,200 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission seeks three-year approval for an extension (no change in requirements) for this information collection.

The Commission responded to a petition for clarification and/or declaratory ruling filed by the City of Richardson, TX, by amending the Commission's rules to clarify what constitutes a valid Public Safety Answering Point (PSAP) triggering a wireless carrier's obligation to provide E911 service to that PSAP.

Specifically, the Order in CC Docket 94–102, FCC 01–293, found that a wireless carrier must implement E911 service within the six-month period following the date of the PSAP's request, and that if challenged by the wireless carrier, the request be deemed valid if the PSAP making the request demonstrates that: (1) A mechanism is in place by which the PSAP will recover its costs of the facilities and equipment necessary to receive and utilize the E911 data elements; (2) the PSAP has ordered the equipment necessary to receive and utilize the E911 data and the equipment will be installed and capable of receiving and utilizing that data no later than six months following its request; and (3) the PSAP has made a timely request to the appropriate local exchange carrier (LEC) for the necessary trunking and other facilities to enable the E911 data to be transmitted to the PSAP. In the alternative, the PSAP may demonstrate that a funding mechanism is in place, that is E911-capable using a Non-Call Associated Signaling (NCAS) technology, and that it has made a timely request to the appropriate LEC for the necessary Automatic Location Identification (ALI) database upgrade.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–21858 Filed 11–1–05; 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

October 25, 2005.

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 January 3, 2006. 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: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit you comments by e-mail send them to: *PRA@fcc.gov*. To submit your comments by U.S. mail, mark it to the attention of Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION: OMB Control No.: 3060–0678.

Title: Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Stations and Space Stations.

Form No.: FCC Form 312, Schedule S.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 3,432.

Estimated Time Per Response: 1–80 hours.

Frequency of Response: On occasion and annual reporting requirements, and third party disclosure requirement.

Total Annual Burden: 42,108 hours.

Total Annual Cost: $531,875,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: On March 15, 2005, the Federal Communications Commission (''Commission'') released a Third Further Notice of Proposed Rulemaking (FCC 05–62) in which it proposed to combine power level requirements and antenna diameter requirements into one off-axis equivalent isotropically radiated power (EIRP) requirement. (Equivalent Isotropically Radiated Power (EIRP) is the product of the gain of the antenna in a given direction relative to an isotropic antenna and the power supplied to that antenna, see 47 CFR Section 2.1). If this proposal is adopted, it would give earth station operators more flexibility in their operations and help expedite its review of some non-routine earth station applications. The Commission invited comment on what revisions would be necessary to its rules to provide protection from interference for earth stations in the event that it adopts an off-axis EIRP requirement for fixed satellite service (FSS) earth stations. Additionally, the Commission invited comment on what specific information should be required from earth station applicants in order to comply with the proposed off-axis EIRP requirement.

The following information collections are proposed in the rulemaking: (1) Earth station applicants will provide a table showing the EIRP of the antenna at various specific off-axis angles, (2) Very Small Aperture Terminal (VSAT) licensees will certify that they will meet any applicable requirements for contention protocols adopted in this proceeding; (3) any party questioning a license applicant's contention protocol certification will provide a technical analysis showing that the applicant's planned contention protocol usage is likely to cause harmful interference to adjacent satellites or terrestrial wireless operations and (4) a certificate of coordination signed by an authorized representative of the National Radio

Astronomy Observatory (NRAO) will be made available to the Commission upon request.

If the proposal is adopted by the Commission, it is anticipated that new applications must be developed and revisions to the International Bureau Filing System (IBFS) will be necessary to accommodate off-axis EIRP requirement for earth stations. The specific data to be collected is not known at this time. It is contingent upon comments received from the public, agency funding, and approval by various senior Commission staff. If the proposal is adopted, the Commission will publish a **Federal Register** notice for public comment in the future.

This information collection is used by the Commission staff in carrying out its duties under the World Trade Organization (WTO) Basic Telecom Agreement. The information is necessary to determine the technical and legal qualifications of applicants or licensees to operate a station transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity. Without such information, applicants and licensees would not obtain the authorization necessary to provide telecommunications services; the Commission would not be able to carry-out its mandate as required by statute; and applicants and licensees would not be able to provide services to the public effectively.

OMB Control No.: 3060–0901.

Title: Reports of Common Carriers and Affiliates.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 20 respondents; 1,200 responses.

Estimated Time Per Response: 5 hours.

Frequency of Response: On occasion and one-time reporting requirements, and third party disclosure requirement.

Total Annual Burden: 6,000 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Common carriers must file copies of all contracts entered into with a communications entity in a foreign point for the provision of common carrier service between the United States and that foreign point. Carriers are exempt from this requirement if the carrier enters into such a contract with a carrier that lacks market power in the relevant foreign market. The information is used by Commission staff to monitor the operating agreements of the U.S. carriers and their foreign correspondents that possess market power, and in particular, to monitor the international accounting rates of such carriers to ensure consistency with Commission policies and the public interest. Without the collection of information, the Commission could not preclude one-way bypass and safeguard its international settlements policy.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–21859 Filed 11–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

October 24, 2005.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Paul J. Laurenzano, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1081.

OMB Approval date: 10/14/2005.

Expiration Date: 10/31/2008.

Title: Federal-State Joint Board on Universal Service, CC Docket No. 96–45.

Form No.: N/A.

Estimated Annual Burden: 22 responses; 242 total annual burden hours; approximately 11 hours average per respondent.

Needs and Uses: In CC Docket No. 96–45, the Commission adopted additional mandatory requirements for ETC designation proceedings in which the Commission acts pursuant to section 241(e)(6) of the Communications Act of 1934, as amended. Consistent with the recommendations of the Federal-State Joint Board on Universal Service, and expanding the mandatory requirements, the Commission imposed additional requirements for designation and annual certifications. These requirements will ensure that ETCs continue to comply with the conditions of the ETC designation and that universal service funds are used for their intended purposes. Specifically, every ETC must submit, on a annual basis: (1) Progress reports on the ETC's five-year service quality improvement plan; (2) detailed information on any outage lasting at least 30 minutes; (3) the number of unfulfilled requests for service from potential customers within its service areas; (4) the number of complaints per 1,000 handsets or lines; (5) certification that the ETC is complying with applicable service quality standards and consumer protection rules; (6) certification that the ETC is able to function in emergency situations; (7) certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and (8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event no other ETC is providing equal access within the service area. The Commission will use the information collected to ensure that each ETC satisfies its obligation under Section 214(e) of the Communications Act of 1934, as amended, to provide services supported by the universal service mechanism throughout the areas for which each ETC is designated.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–21867 Filed 11–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

October 21, 2005.

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 January 3, 2006. 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: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit you comments by e-mail send them to: *PRA@fcc.gov.* To submit your comments by U.S. mail, mark it to the attention of Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1035.

Title: Part 73, Subpart F—International Broadcast Stations.

Form Nos.: FCC Forms 309, 310 and 311.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 24.

Estimated Time Per Response: 0.5–10 hours.

Frequency of Response: On occasion, annual, semi-annual, and one time reporting requirements, and recordkeeping requirement.

Total Annual Burden: 684 hours.

Total Annual Cost: $42,970.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This information collection is used by the Federal Communications Commission (''Commission'') to assign frequencies for use by international broadcast stations, to grant authority to operate such stations, and to determine if interference or adverse propagation conditions exist that may impact the operation of such stations. The Commission collects this information pursuant to 47 CFR Part 73, Subpart F. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions. The orderly nature of the provision of international broadcast service would be in jeopardy without the Commission's involvement.

On June 26, 2003, the Commission's International Bureau published a notice in the **Federal Register** (68 FR 38041) to propose creation of three new forms: (1) Application for Authority to Construct or Make Changes in an International Broadcast Station (FCC Form 420–IB) approved by OMB under OMB Control Number 3060–1057; (2) Application for an International Broadcast Station License (FCC Form 421–IB) approved by OMB under OMB Control Number 3060–1056; and (3) Application for Renewal of an International Broadcast Station License (FCC Form 422–IB) approved by OMB under OMB Control Number 3060–1054. The International Bureau proposed that after the new applications were developed, international broadcasters would file the FCC Form 420–IB in lieu of the FCC Form 309. Furthermore, international broadcasters would file the FCC Form 421–IB in lieu of the FCC Form 310. Additionally, international broadcasters would file the FCC Form 422–IB in lieu of the FCC Form 311. Experimental broadcasters would continue to file the FCC Forms 309, 310 and 311 with the Commission. However, the development of the proposed new applications FCC Forms 420–IB, 421–IB, and 422–IB has been postponed indefinitely due to lack of agency funding. International broadcasters will continue to file the FCC Forms 309, 310, and 311 with the Commission until further notice. After the new applications have been developed by the International Bureau, the Commission will issue a Public Notice announcing the availability of the new applications.

OMB Control No.: 3060–0751.

Title: Reports Concerning International Private Lines Interconnected to the U.S. Public Switched Network.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 10.

Estimated Time Per Response: 8 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 80 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission determined that the authorized resale of international private lines interconnected to the U.S. pubic switched network would tend to divert international message telephone service (IMTS) traffic from the settlements process and increase the U.S. net settlements deficit. The purpose of this information collection is to review the impact, if any, that end-user private line interconnections have on the U.S. international settlements policy. The data will also enhance the ability of both the Commission and interested parties to monitor for unauthorized resale of international private lines that are interconnected to the U.S. public switched network. Without the collection of this information, the Commission would not be able to monitor the impact that end-user private line interconnections have on the U.S. international public switched network.

OMB Control No.: 3060–0768.

Title: 28 GHz Band Segmentation Plan Amending the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Bands, to Reallocate the 29.5–30.0 GHz Frequency Band, and to Establish Rules and Policies for Local Multipoint Distribution Services (LMDS) and for the Fixed Satellite Service.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 15 respondents; 60 responses.

Estimated Time Per Response: 1.5 hours.

Frequency of Response: On occasion and annual reporting requirements, and third party disclosure requirement.

Total Annual Burden: 90 hours.

Total Annual Cost: $24,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The various collections of information referenced under this OMB control number are contained in 47 CFR Parts 25 and 101 of the Commission's rules. The Commission uses the information to carry out its duties as set forth in Sections 308 and 309 of the Communications Act of 1934, as amended. Specifically, the Commission and other applicants and/or licensees in the 28 GHz band use the information to determine the technical coordination of systems that are designed to share the same band segment in the 28 GHz

frequency band. If this information is compiled less frequently or not filed in conjunction with our rules, applicants and licensees will not obtain the authorization necessary to provide telecommunications services; the Commission will not be able to carry out its mandate as required by statute; and applicants and licensees will not be able to provide service effectively.

OMB Control No.: 3060–1014.

Title: Ku-Band NGSO FSS.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 5 respondents; 45 responses.

Estimated Time Per Response: 1–4 hours.

Frequency of Response: On occasion, annual, and other reporting requirements.

Total Annual Burden: 140 hours.

Total Annual Cost: $176,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The information collection requirements accounted for in this collection are necessary to ensure that prospective licensees in the Non-geostationary (NGSO) FSS follow their service rules. Without such information collection requirements, many existing radio services, both satellite and terrestrial, could potentially be interrupted by interference caused by NGSO FSS systems on the same frequencies.

OMB Control No.: 3060–0882.

Title: Section 95.833, Construction Requirements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,468.

Estimated Time Per Response: 1 hour.

Frequency of Response: Every 10 year reporting requirement.

Total Annual Burden: 1,468 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This rule section is necessary for 218–219 MHz service system licensees to file a report after ten years of license grant to demonstrate that they provide substantial service to its service areas. The information issued by Commission staff to assess compliance with 218–219 MHz service construction requirements, and to provide adequate spectrum for the service. This will facilitate spectrum efficiency and competition by the 218–219 MHz licensees in the wireless marketplace. Without this information, the Commission would not be able to carry out its statutory responsibilities.

OMB Control No.: 3060–0223.

Title: Section 90.129, Supplemental Information to be Routinely Submitted with Applications, Non-Type Accepted Equipment.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; business or other for-profit, and state, local or tribal government.

Number of Respondents: 100.

Estimated Time Per Response: .33 hours (20 minutes).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 33 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: Yes.

Needs and Uses: Section 90.129 requires applicants proposing to use transmitting equipment that is not type-certified by FCC laboratory personnel to provide a description of the proposed equipment. This assures that the equipment is capable of performing within certain tolerances that limit the interference potential of the device. The information collected is used by FCC engineers to determine the interference potential of the proposed equipment.

OMB Control No.: 3060–0204.

Title: Section 90.20(a)(2)(v), Physically Handicapped ''Special Eligibility Showing''.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 20.

Estimated Time Per Response: .084 hours (5 minutes).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 1 hour.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Section 90.20(a)(2)(v) provides that persons claiming eligibility in the Special Emergency Radio Service on the basis of being physically handicapped must present a physician's statement indicating that they are handicapped. Submission of this information is necessary to ensure that frequencies reserved for licensing to handicapped individuals are not licensed to non-handicapped persons. Commission personnel use the data to determine the eligibility of applicants to hold a radio station authorization for specific frequencies. If the information were not collected, the Commission would have no way to determine eligibility.

OMB Control No.: 3060–0695.

Title: Section 87.219, Automatic Operations.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 50.

Estimated Time Per Response: 0.7 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, and third party disclosure requirement.

Total Annual Burden: 35 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This rule requires that if airports have control towers or Federal Aviation Administration (FAA) flight service stations, and more than one licensee and wants to have an automated aeronautical advisory station (unicom), they must write an agreement and keep a copy of the agreement with each licensee's station authorization. The information will be used by compliance personnel for enforcement purposes and by licensees to clarify responsibility in operating unicom.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–21868 Filed 11–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

October 27, 2005.

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 Act (PRA) comments should be submitted on or before December 2, 2005. If you anticipate that you will be submitting PRA 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.* If you would like to obtain or view a copy of this new or revised information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

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 No.: 3060–0987.

Title: 911 Callback Capability: Non-initialized Phones.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, and State, local and tribal governments.

Number of Respondents: 3,137.

Estimated Time Per Response: .50–3 hours.

Frequency of Response: One time reporting requirement and third party disclosure requirement.

Total Annual Burden: 4,885 hours.

Total Annual Cost: $661,125.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission seeks three-year approval for an extension (no change in requirements) for this information collection.

This collection places reporting and third party requirements on wireless and wireline carriers and equipment manufacturers aimed at responding to the problem of the inability of emergency workers to contact for further critical information a 911 caller using a non-initialized wireless telephone or a ''911 only'' phone, which do not have dialable numbers. To advise the public and emergency workers of this limitation and to thus advise them in using such phones in emergency situations to provide as much critical information, particularly regarding location, the Commission adopts labeling, software, and public education requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–21870 Filed 11–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 05–2753]

GSA Approves Renewal of North American Numbering Council Charter Through September 26, 2007

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On October 25, 2005, the Commission released a public notice announcing GSA approves renewal of North American Numbering Council charter through September 26, 2007. The intended effect of this action is to make the public aware of the renewal of the North American Numbering Council charter.

DATES: Renewed through September 26, 2007.

ADDRESSES: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 5–A420, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *Deborah.Blue@fcc.gov.* The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released October 25, 2005.

The GSA has renewed the charter of the North American Numbering Council (Council) through September 26, 2007. The Council will continue to advise the Federal Communications Commission (Commission) on rapidly evolving and competitively significant numbering issues facing the telecommunications industry.

In October 1995, the Commission established the North American Numbering Council, a federal advisory committee created pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (1988), to advise the Commission on issues related to North American Numbering Plan (NANP) administration in the United States, including local number portability administration issues. The original charter of the Council was effective on October 5, 1995, establishing an initial two-year term. Amended charters were filed on October 5, 1997, October 5, 1999, October 5, 2001, and October 5, 2003, each renewing the term of the charter for an additional two years.

Since the last charter renewal, the Council has provided the Commission with critically important recommendations regarding numbering issues. During the term of the prior amended charter, the Council made recommendations on issues which included: (1) NANC Local Number Portability Administrator (LNPA) Change Orders 399 and 400—changes to the software used by the Number Portability Administration Center; (2) Request for Commission Endorsement of Two LNPA Position Papers; (3) NANC acceptance of new members of NeuStar's Board of Directors; (4) Process Flow Change Based on the Industry Numbering Committee Issue 407 (CC Docket No. 99–200); (5) NeuStar's Request for Modification of Prior Approval Policies; (6) Intermodal Porting Intervals; (7) Treatment of NANP Administration Funds; (8) The NANC's Issue Management Group Report on the Impact of a 25% Number Pooling Contamination Threshold; (9) Abbreviated Dialing for One Call Notification; and (10) Amendment of the LNP Provisioning Flows Narrative to include a footer statement and timer change. The Council also provided detailed evaluations of the North American Numbering Plan Administrator (NANPA) and the Pooling Administrator (PA). The Council will continue to evaluate the NANPA's and the PA's performances annually.

Moreover, the Council is presently considering and formulating recommendations on other important numbering-related issues that will require work beyond the term of the present charter. The term of the Council's renewed charter begins September 26, 2005 and runs through September 26, 2007.

The value of this federal advisory committee to the telecommunications industry and to the American public cannot be overstated. Numbers are the means by which consumers gain access to, and reap the benefits of, the public switched telephone network. The Council's recommendations to the Commission will facilitate fair and efficient numbering administration in

the United States, and will ensure that numbering resources are available to all telecommunications service providers on a fair and equitable basis, consistent with the requirements of the Telecommunications Act of 1996.

Federal Communications Commission.

James Bachtell,

Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 05–21612 Filed 11–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 05–283; DA 05–2680]

Access Charges for IP-Originated Calls

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks comment on a petition for declaratory ruling filed by Grande Communications. Grande seeks a declaratory ruling regarding the treatment of traffic terminated through Grande to end users of interconnected local exchange carriers (LECs), in circumstances where customers of Grande have certified that the traffic originated in Internet protocol (IP) format. Specifically, Grande seeks a declaratory ruling that a LEC may properly rely on a customer's certification that the traffic being sent originates in IP format at the calling party's premises and therefore undergoes a net protocol conversion, or is otherwise enhanced, IP-enabled traffic; a LEC may send such certified traffic to other terminating LECs over local interconnection trunks; and terminating LECs receiving such traffic over local interconnection trunks are to treat that traffic as local traffic for intercarrier compensation purposes and may not assess access charges for such traffic.

DATES: Comments due December 12, 2005, and reply comments due January 11, 2006.

ADDRESSES: You may submit comments, identified by WC Docket No. 05–283, by any of the following methods:

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

Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs.* Follow the instructions for submitting comments.

E-mail: Include the docket number in the subject line of the message.

Mail: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

People With Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530, *jennifer.mckee@fcc.gov.*

SUPPLEMENTARY INFORMATION: On October 3, 2005, Grande Communications, Inc. (Grande) filed a petition for declaratory ruling regarding the treatment of traffic terminated through Grande to end users of interconnected local exchange carriers (LECs), in circumstances where customers of Grande have certified that the traffic originated in Internet protocol (IP) format. Specifically, Grande seeks a declaratory ruling that: (1) A LEC may properly rely on a customer's certification that the traffic being sent originates in IP format at the calling party's premises and therefore undergoes a net protocol conversion, or is otherwise enhanced, IP-enabled traffic; (2) a LEC may send such certified traffic to other terminating LECs over local interconnection trunks; and (3) terminating LECs receiving such traffic over local interconnection trunks are to treat that traffic as local traffic for intercarrier compensation purposes and may not assess access charges for such traffic.

Interested parties may file comments on or before December 12, 2005, and reply comments on or before January 11, 2006. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case WC Docket No. 05–283. 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.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing.

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). Parties are strongly encouraged to file comments electronically using the Commission's Electronic Comment Filing System (ECFS).

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.
—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.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Jennifer McKee, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A263, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *jennifer.mckee@fcc.gov.* Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com.*

Documents in WC Docket No. 05–283, including the Grande Petition, are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail *fcc@bcpiweb.com.*

This matter shall be treated as a ''permit-but-disclose'' proceeding in

accordance with the Commission's *ex parte* rules. 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. Other requirements 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.

Federal Communications Commission.

Thomas J. Navin,

Chief, Wireline Competition Bureau.

[FR Doc. 05–21730 Filed 11–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

October 27, 2005.

Open Commission Meeting Thursday, November 3, 2005

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, November 3, 2005, which is scheduled to commence at in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Media	*Title:* Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992. *Summary:* The Commission will consider a Notice of Proposed Rulemaking regarding Section 621(a)(1)'s directive that local franchising authorities not unreasonably refuse to award competitive cable franchises.
2	Office of Engineering and Technology	*Title:* Requirements for Digital Television Receiving Capability (ET Docket No. 05–24). *Summary:* The Commission will consider a Second Report and Order concerning its requirements for new television receivers to include the capability to receive digital television signals.
3	Media	*Title:* Digital Television Distributed Transmission System Technologies. *Summary:* The Commission will consider a Clarification Order and Notice of Proposed Rulemaking to clarify the interim policy and propose rules for the use of distributed transmission system ("DTS") technologies by digital television stations.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Make your request as early as possible; please allow at least 5 days advance notice. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–21931 Filed 10–31–05; 12:12 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

Schedule Change; Open Commission Meeting, Friday, October 28, 2005

October 28, 2005.

Please note that the time for the Federal Communications Commission Open Meeting is rescheduled from 10 a.m. to 5 p.m.

The Federal Communications Commission will consider the Agenda items listed on the Commission's Notice of October 21st at the Open Meeting on Friday, October 28, 2005, scheduled to commence at 5 p.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–21932 Filed 10–31–05; 12:12 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2733]

Petitions for Reconsideration of Action in Rulemaking Proceeding

October 25, 2005.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by November 17,

2005. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Provision of Directory Listing Information under the Communications Act of 1934, as Amended (CC Docket No. 99–273).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–21729 Filed 11–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2005–N–08]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) is seeking public comments concerning proposed changes to the information collection entitled ''Federal Home Loan Bank Acquired Member Assets, Core Mission Activities, Investments and Advances,'' which has been assigned control 3069–0058 by the Office of Management and Budget (OMB). The Finance Board intends to submit the entire information collection, with the proposed changes described in this Notice, to OMB for review and approval of a 3 year extension of the control number, which is due to expire on March 31, 2007.

DATES: Interested persons may submit comments on or before January 3, 2006.

Comments: Submit comments by any of the following methods:

E-mail: comments@fhfb.gov.

Fax: 202–408–2580.

Mail/Hand Delivery: Federal Housing Finance Board, 1625 Eye Street NW., Washington DC 20006, ATTENTION: Public Comments.

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to the Finance Board at *comments@fhfb.gov* to ensure timely receipt by the agency.

Include the following information in the subject line of your submission: Federal Housing Finance Board. Proposed Collection; Comment Request: Federal Home Loan Bank Acquired Member Assets, Core Mission Activities, Investments and Advances. 2005–N–08.

We will post all public comments we receive on this notice without change, including any personal information you provide, such as your name and address, on the Finance Board Web site at *http://www.fhfb.gov/pressroom/pressroom_regs.htm.*

FOR FURTHER INFORMATION CONTACT: David Roderer, Office of Supervision, by telephone at 202–408–2540, by electronic mail at *rodererd@fhfb.gov,* or by regular mail at the Federal Housing Finance Board, 1625 Eye Street NW., Washington DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

The Finance Board has authorized the Federal Home Loan Banks (Banks) to acquire mortgage loans and other assets from their members or housing associates under certain circumstances. 12 CFR part 955. The regulation refers to these assets as acquired member assets or AMA. As part of this regulatory authorization, each Bank that acquires residential mortgage loans must provide to the Finance Board certain loan-level data on a quarterly basis. The Finance Board uses this data to monitor the safety and soundness of the Banks and the extent to which the Banks are fulfilling their statutory housing finance mission through their AMA programs. *See* 12 U.S.C. 1422a(a).

While the Banks provide the AMA data directly to the Finance Board, each Bank initially must collect the information from the private-sector member or housing associate from which the Bank acquires the mortgage loan. Bank members and housing associates already collect the vast majority of the data the Finance Board requires in order to do business with Fannie Mae and Freddie Mac under regulatory requirements issued by the Department of Housing and Urban Development (HUD) and pursuant to the information collection requirements under the Home Mortgage Disclosure Act (HMDA). Thus, the Finance Board's information collection imposes only a minor incremental additional burden on Bank members and housing associates.

The OMB control number for the information collection, which expires on March 31, 2007, is 3069–0058. The likely respondents are institutions that sell AMA assets to Banks.

B. Proposed Changes to the Information Collection

As part of the reorganization of agency reporting requirements, the Finance Board plans to move the AMA information collection from 12 CFR part 955 (specifically, section 955.4 and Appendices A and B) to the Data Reporting Manual (DRM). *See* 70 FR 9551 (February 28, 2005). In addition to moving the information collection from the AMA rule to the DRM, the Finance Board is proposing to make the following changes to the AMA reporting requirements:

1. Conforming AMA Reporting Requirements to Existing Practice

In consultation with the Banks, the Finance Board already has made non-substantive changes to the AMA reporting requirements including refining the definitions of certain reporting elements [1] and adding new elements to improve database management and enhance monitoring.[2] The Finance Board also requires the Banks to report certain variables for all outstanding AMA residential mortgage loans, not just for those loans acquired during the calendar year, to better track performance, including delinquencies, of each loan.

2. Eliminating Data Elements

Based on analysis of the AMA data collected to date, the Finance Board is proposing to eliminate sparsely populated data fields and data fields the utility of which are unwarranted when balanced against the collection and reporting burden. These fields include the geographic indicator ''Place Code'' and the mortgage identifiers ''Cooperative Unit Mortgage,'' ''Mortgage Purchased under the Banks'' Community Investment Cash Advances (CICA) Programs'' (for single-family AMA), and ''Bank Real Estate Owned.'' The Finance Board also proposes deleting the data field ''Acquisition Type'' due to the addition of the ''Program Type'' data element.

[1] The definition of: ''County'' was changed from the county name to the 3-digit Federal Information Processing Standard (FIPS) code for the county; ''PMI Percent'' was changed from percent of private mortgage insurance to percent of primary mortgage insurance, including mortgages insured by government agencies; ''Credit Enhancement'' was changed from the numeric code indicating the type of credit enhancement to the dollar value of the calculated loan-level credit enhancement; ''Prepayment Penalty Terms'' was changed to ''Prepayment Penalty Date'' and defined as the date that the application of the prepayment penalty ends; ''Default Status'' was changed to ''Delinquency Status'' and represents the delinquency status of the loan at the end of the reporting period; and ''Interest Rate'' was defined as the note rate on the loan at the time of loan origination.

[2] ''Pool Rating'' for the letter credit rating of the loan pool was added to the loan-level data reporting requirement. New variables added for database management purposes ere: ''Program Type'' and ''Pool Number.''

To avoid duplication, the Finance Board is proposing to require reporting of loan-level data on the loan, borrower, and property characteristics only at the end of the calendar quarter in which the loan is acquired. Currently, the Banks must report this data twice—in the loan-level report for the acquisition quarter and the fourth quarter.

3. Reducing Reporting Burden

To reduce the reporting burden, the Finance Board is proposing to require submission of loan-level data, which the Banks already collect and maintain, instead of aggregate data reports. The Finance Board also proposes eliminating data elements the agency collects through the membership database and directly from HUD, specifically the elements that describe the acquiring lender or member selling the AMA to the Bank and that contain census level demographic information related to the property.[3] To facilitate collection through the membership database, the Finance Board is proposing to add one new data element—the ''Federal Housing Finance Board Identification (FHFBID) Number.''

To reduce reporting redundancy, the Finance Board proposes a separate pool-level data report instead of reporting pool variables in the loan-level data report. In addition to streamlining pool-level data reporting, the proposed changes would require the Banks to provide a quarterly update on loan pools so the Finance Board can monitor changes in the credit quality of pools and estimated or actual credit enhancements, which are important safety and soundness considerations. The pool-level report would include: ''Bank District Flag,'' ''Pool Number,'' 12 variables representing ''Participation Percentages'' of each of the 12 Banks in the pool, and 4 variables representing information on the pool credit enhancement and credit rating—''Pool Rating,'' ''Pool Credit Enhancement,''[4] ''Recalculated Pool Rating,'' and ''Recalculated Credit Enhancement.''

4. Adding New Data Elements

The Finance Board is proposing to add several new fields to comply with revised federal data standards for classifying race and ethnicity. *See* 62 FR 58782 (October 30, 1997). The current data fields, ''Borrower Race or National Origin'' and ''Co-Borrower Race or National Origin,'' would be separately collected and reported as ''Borrower Ethnicity,'' ''Co-Borrower Ethnicity,'' ''Borrower Race,'' and ''Co-Borrower Race.''

To better track and model prepayment and default rates of AMA, the Finance Board proposes adding new loan-level data elements: ''Type of Credit Score;'' ''Adjustment Frequency;'' ''Negative Amortization;'' ''Current Unpaid Principal Balance;'' ''Current Coupon;'' and ''Loan Amount'' (for multi-family AMA); and redefining ''Borrower Credit Score'' and ''Co-Borrower Credit Score'' to include, in addition to the Fair, Isaacs, Co. (FICO) score, the NextGen FICO credit score.

5. List of Data Elements

Both Appendix A, which lists the data elements for single-family residential mortgage loans, and Appendix B, which lists the data elements for multi-family residential mortgage loans, would be divided into three parts: Part I—loan-level data elements for all single-family and multi-family AMA acquired during the calendar quarter; Part II—loan-level data elements for all single-family and multi-family AMA outstanding in the calendar quarter; and Part III—pool-level data elements for pools of single-family and multi-family AMA.

The loan-level data elements in Part I generally reflect characteristics of the loan or the borrower(s) and should not change over the life of the loan. To simplify the current reporting requirements, a Bank would have to report loan-level data specified in Part I only during the calendar quarter in which it acquired the loan.

The loan-level data elements in Part II include data the Bank would have to report for all single-family and multi-family AMA outstanding in a calendar quarter. These data elements are more meaningful when monitored on a continuing basis. The Finance Board would use this information to create and maintain a database for safety and soundness monitoring, particularly of the Bank's risk management.

Part III includes data the Bank would have to report for pools or assets backed by pools. The Finance Board would use this information to monitor the safety and soundness of the Bank's AMA program.

C. Burden Estimate

The Finance Board estimates that the hour burden associated with the AMA collection will remain unchanged. The Finance Board estimates the total annual average number of respondents at 600, with 4 responses per respondent. The estimate for the average hours per response is 24 hours. The estimate for the total annual hour burden is 57,600 hours (600 respondents × 4 responses per respondent × 24 hours).

Bank members could incur additional one-time costs to be able to collect and report the loan-level data elements needed to allow for better tracking and modeling of prepayment and default rates of mortgage portfolios. The Finance Board estimates this additional, one-time cost at $120,000 ($2,000 × 600 members).

D. Comment Request

1. Proposed Changes to the AMA Database

The Finance Board requests comments on the utility and practicality of the proposed data elements, including whether additional elements should be included, deleted, or modified. The Finance Board also seeks comments on whether the data descriptions in Appendices A and B are clear.

2. Paperwork Reduction Act Burden Estimate

The Finance Board requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens and costs 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.

Dated: October 27, 2005.

By the Federal Housing Finance Board.

John P. Kennedy,

General Counsel.

[3] These elements are: ''Acquiring Lender Institution,'' ''Acquiring Lender City,'' ''Acquiring Lender State,'' ''Type of Acquiring Lender Institution,'' ''Census Tract—Percent Minority,'' ''Census Tract—Median Income,'' ''Local Area Median Income,'' ''Tract Income Ratio,'' ''Area Median Family Income,'' ''Borrower Income Ratio,'' ''Unit—Affordable Category,'' ''Unit Type XX—Affordability Level'' (for multi-family AMA), and ''Geographically Targeted Indicator.''

[4] The new data element ''Pool Credit Enhancement'' would replace the current data element ''Credit Enhancement,'' which itself has been redefined since the current rule was adopted. *See* n.1. The Finance Board has effectively been collecting pool-level credit enhancement values because it aggregates the loan-level credit enhancement values currently collected. Standing alone, however, the loan-level credit enhancement values are not as meaningful as the pool-level values, and the Finance Board, therefore, is proposing to collect the pool-level values directly.

APPENDIX A

Reporting Requirements for AMA That Are Single-Family Residential Mortgage Loans or Single-Family Residential Mortgage Loans Backing AMA

Part I: Fields Reported For All Such Loans Acquired During the Calendar Quarter:

1. *Bank District Flag* -- Two-digit code designating the District Bank where the member institution that initially provides the credit enhancement for the AMA is located.

2. *Program Type* -- Two-digit code, as designated by the Finance Board, identifying AMA Program type (*e.g.*, MPP-FHA; MPF-100, etc.).

3. *Loan Number* – Bank assigned numeric identifier, unique to each mortgage loan within a Bank's AMA portfolio.

4. *Pool Number* – Bank assigned numeric identifier for the pool in which the mortgage loan is a part; the Pool Number should be unique within a Bank's AMA portfolio.

5. *US Postal State* -- Two-digit Federal Information Processing Standard (FIPS) code for the property.

6. *US Postal Zip Code* -- Five-digit zip code for the property.

7. *MSA Code* -- Five-digit code for the property's Metropolitan Statistical Area (MSA).

8. *County* – Three-digit FIPS code for the property's county, as designated in the most recent decennial census by the Bureau of the Census.

9. *Census Tract/Block Numbering Area (BNA)* -- Tract/BNA number for the property as used in the most recent decennial census by the Bureau of the Census.

10. *Borrower(s) Annual Income* -- Combined income of all borrowers at the time of mortgage loan origination.

11. *Acquisition Unpaid Principal Balance (UPB)* -- UPB in whole dollars of the mortgage loan when the loan was first acquired by a Bank, or of each mortgage loan backing an asset when such asset was first acquired by a Bank.

12. *Loan-to-Value (LTV) Ratio at Origination* -- LTV ratio of the mortgage loan at the time of origination.

13. *Date of Mortgage Loan* -- Date the mortgage loan was originated.

14. *Date of Acquisition* -- Date a Bank first acquires the mortgage loan, or the asset backed by the mortgage loan.

15. *Purpose of Mortgage Loan* – Code indicating the purpose of the mortgage loan (*e.g.*, purchase money mortgage, refinancing, construction mortgage, property rehabilitation).

16. *Product Type* – Code indicating the product type of the mortgage (*e.g.*, fixed rate mortgage, adjustable rate mortgage (ARM), balloon mortgage, graduated payment mortgage (GPM) or growing equity mortgage (GEM), reverse annuity mortgage, or other).

APPENDIX A (continued)

Reporting Requirements for AMA That Are Single-Family Residential Mortgage Loans or Single-Family Residential Mortgage Loans Backing AMA

17. *Federal Insurance or Guarantee* -- Code that indicates whether any part of the mortgage loan has Federal insurance or a Federal guarantee, and from which agency.

18. *Primary Mortgage Insurance Percent* -- Percent of loan balance at origination covered by private and/or government mortgage insurance.

19. *Term of Mortgage at Origination* -- Term of the mortgage loan at the time of origination, in months.

20. *Amortization Term* -- For amortizing mortgage loans, the amortization term of the mortgage loan, in months.

21. *FHFBID Number* – Federal Housing Finance Board Identification Number of the member institution that initially provides the credit enhancement for the AMA.

22. *Number of Borrowers* -- Number of borrowers at the time of origination.

23. *First-Time Home Buyers* -- Code indicating whether the mortgagor(s) are first-time homebuyers.

24. *Borrower Race* -- Code indicating the race of the borrower (*e.g.*, Asian, Native Hawaiian or Other Pacific Islander). Codes are to be consistent with the race codes used in the latest decennial census.

25. *Borrower Ethnicity* – Code indicating the ethnicity of the borrower (*i.e.*, "Hispanic or Latino" or "Not Hispanic or Latino"), consistent with the latest decennial census ethnicity codes.

26. *Co-Borrower Race* -- Code indicating the race of the co-borrower (*e.g.*, Asian, Native Hawaiian, or Other Pacific Islander). Codes are to be consistent with the race codes used in the latest decennial census.

27. *Co-Borrower Ethnicity* -- Code indicating the ethnicity of the co-borrower (*i.e.*, "Hispanic or Latino" or "Not Hispanic or Latino"), consistent with the latest decennial census ethnicity codes.

28. *Borrower Gender* -- Code that indicates whether the borrower is male or female.

29. *Co-Borrower Gender* -- Code that indicates whether the co-borrower is male or female.

30. *Age of Borrower* -- Age of borrower, in years, at the time of mortgage loan origination.

31. *Age of Co-Borrower* -- Age of co-borrower, in years, at the time of mortgage loan origination.

32. *Occupancy Code* – Code that indicates whether the mortgaged property is an owner-occupied principal residence, or a rental investment property.

33. *Number of Units* -- Number of units in the mortgaged property (*i.e.*, one to four).

34. *Unit – Number of Bedrooms* – Four separate fields indicating, where the property contains non-owner-occupied dwelling units, the number of bedrooms in each of those units.

APPENDIX A (continued)

Reporting Requirements for AMA That Are Single-Family Residential Mortgage Loans or Single-Family Residential Mortgage Loans Backing AMA

35. *Unit -- Reported Rent Level* -- Four separate fields indicating, where the property contains non-owner-occupied dwelling units, the rent level for each unit in whole dollars.

36. *Unit – Reported Rent Level Plus Utilities* -- Four separate fields indicating, where the property contains non-owner-occupied dwelling units, the rent level plus the utility cost for each unit in whole dollars.

37. *Unit – Owner-Occupied* -- Four separate fields indicating whether each of the units is owner-occupied.

38. *Original Interest Rate* -- Interest rate on the loan at the time of origination.

39. *Loan Amount* -- Mortgage loan balance at the time of origination.

40. *Front-end Ratio* -- Ratio of principal, interest, taxes, and insurance to Borrower(s) Annual Income at the time of origination.

41. *Back-end Ratio* -- Ratio of all debt payments to Borrower(s) Annual Income at the time of origination.

42. *Type of Credit Score* – Code indicating borrower(s)'credit score type (*i.e.*, Fair, Isaacs, Co. (FICO) or NextGen FICO).

43. *Borrower Credit Score* – The Fair, Isaacs, Co. (FICO) or NextGen FICO credit score of borrower at the time of mortgage loan origination.

44. *Co-Borrower Credit Score* – The Fair, Isaacs, Co. (FICO) or NextGen FICO credit score of co-borrower at the time of mortgage loan origination.

45. *Self-Employed Indicator* -- Code indicating whether the borrower was self-employed at the time of mortgage loan origination.

46. *Property Type* -- Code indicating the type of property (*e.g.*, single-family detached, condominium, PUD).

47. *ARM Index* – For ARMs only, index used for the calculation of interest on an ARM.

48. *ARM Margin* – For ARMs only, margin added to the index used for the calculation of the interest on an ARM.

49. *Adjustment Frequency* – For ARMs only, interest rate adjustment frequency in months.

50. *Negative Amortization* -- For ARMs only, code indicating if amortization is negative.

51. *Prepayment Penalty Date* – Date that the application of a prepayment penalty ends.

APPENDIX A (continued)

Reporting Requirements for AMA That Are Single-Family Residential Mortgage Loans or Single-Family Residential Mortgage Loans Backing AMA

Part II: Fields Reported For All Such Loans Outstanding in the Calendar Quarter:

52. *Bank District Flag* – Two-digit code designating the District Bank where the member institution that initially provides the credit enhancement for the AMA is located.

53. *Loan Number* -- Bank assigned numeric identifier, unique to each mortgage loan within a Bank's AMA portfolio.

54. *Delinquency Status* -- Code indicating the delinquency status of the mortgage loan at the end of the calendar quarter.

55. *Termination Date* – For mortgage loans that terminated during the calendar quarter, date on which the mortgage loan terminated.

56. *Termination Type* – For mortgage loans that terminated during the calendar quarter, code indicating the reason for the mortgage loan termination (*e.g.*, prepayment, foreclosure).

57. *Current Unpaid Principal Balance (UPB)* – UPB on the mortgage loan at the end of the calendar quarter.

58. *Current Coupon* – For ARMs only, mortgage interest rate on the mortgage loan at the end of the calendar quarter.

Part III: Fields Reported For Pools of Such Loans:

59. *Bank District Flag* -- Two-digit code designating the District Bank where the member institution that initially provides the credit enhancement for the AMA is located.

60. *Pool Number* -- Bank assigned numeric identifier for the pool in which the mortgage loan is a part; the Pool Number should be unique within a Bank's AMA portfolio.

61. *Participation Percentages* – Twelve separate fields indicating each Bank's percentage participation in the AMA-eligible pool or asset backed by such a pool, as of the date the Bank acquires any portion of the pool or asset.

62. *Pool Rating* – For pools of mortgage loans or assets backed by such mortgage loans, the putative or actual letter credit rating of the pool as of the date the Bank acquires any portion of the pool or asset backed by such pools.

63. *Pool Credit Enhancement* – The dollar amount of the credit enhancement required to bring the pool to the credit rating as specified by the Bank.

64. *Recalculated Pool Rating* – For pools of mortgage loans where the credit enhancement is recalculated during the calendar quarter, the recalculated putative or actual letter credit rating using the initial amount of the Pool Credit Enhancement.

65. *Recalculated Credit Enhancement* – For pools of mortgage loans that have the credit enhancement recalculated during the calendar quarter, the dollar amount of the credit enhancement required to bring the pool to the initial putative or actual letter credit rating.

APPENDIX B

Reporting Requirements for AMA That Are Multi-Family Residential Mortgage Loans or Multi-Family Residential Mortgage Loans Backing AMA

Part I: Fields Reported For All Such Loans Acquired During the Calendar Quarter:

1. *Bank District Flag* -- Two-digit code designating the District Bank where the member institution that initially provides the credit enhancement for the AMA is located.

2. *Program Type* -- Two-digit code, as designated by the Finance Board, identifying AMA Program type.

3. *Loan Number* – Bank assigned numeric identifier, unique to each mortgage loan within a Bank's AMA portfolio.

4. *Pool Number* – Bank assigned numeric identifier, for the pool in which the mortgage loan is a part; the Pool Number should be unique within a Bank's AMA portfolio.

5. *US Postal State* -- Two-digit Federal Information Processing Standard (FIPS) code for the property.

6. *US Postal Zip Code* -- Five-digit zip code for the property.

7. *MSA Code* -- Five-digit code for the property's Metropolitan Statistical Area (MSA).

8. *County* – Three-digit FIPS code for the property's county, as designated in the most recent decennial census by the Bureau of the Census.

9. *Census Tract/Block Numbering Area (BNA)* -- Tract/BNA number for the property as used in the most recent decennial census by the Bureau of the Census.

10. *Acquisition Unpaid Principal Balance (UPB)* -- UPB in whole dollars of the mortgage loan when the loan was first acquired by a Bank, or of each mortgage loan backing an asset when such asset was first acquired by a Bank.

11. *Original Interest Rate* – Interest rate on the loan at the time of origination.

12. *Loan Amount* – Mortgage loan balance at the time of origination.

13. *Loan-to-Value (LTV) Ratio at Origination* -- LTV ratio of the mortgage loan at the time of origination.

14. *Date of Mortgage Loan* -- Date the mortgage loan was originated.

15. *Date of Acquisition* -- Date a Bank first acquires the mortgage loan or the asset backed by the mortgage loan.

16. *Purpose of Mortgage Loan* – Code indicating the purpose of the mortgage loan (*e.g.*, purchase money mortgage, refinancing, construction mortgage, property rehabilitation).

APPENDIX B (continued)

Reporting Requirements for AMA That Are Multi-Family Residential Mortgage Loans or Multi-Family Residential Mortgage Loans Backing AM

17. *Cooperative Project Loan* – Code indicating whether the mortgage loan is a project loan on a cooperative housing building.

18. *Mortgagor Type* – Code indicating the type of mortgagor (*i.e.*, an individual, a for-profit entity such as a corporation or partnership, a nonprofit entity such as a corporation or partnership, a public entity, or other type of entity).

19. *Product Type* – Code indicating the product type of the mortgage (*e.g.*, fixed rate mortgage, adjustable rate mortgage (ARM), balloon mortgage, graduated payment mortgage (GPM) or growing equity mortgage (GEM), reverse annuity mortgage, or other).

20. *Construction Loan* – Code indicating whether the mortgage is for a construction loan.

21. *Federal Insurance or Guarantee* -- Code that indicates whether any part of the mortgage loan has Federal insurance or a Federal guarantee, and from which agency.

22. *Primary Mortgage Insurance Percent* -- Percent of loan balance at origination covered by private and/or government mortgage insurance.

23. *FHA Risk Share Percent* -- The percentage of the risk assumed for the mortgage purchased under a risk-sharing arrangement with FHA.

24. *Mortgage Purchased under the Banks' Community Investment Cash Advances (CICA) Programs* – Code indicating whether the mortgage is on a project under an AHP, CIP or other CICA program.

25. *Term of Mortgage at Origination* -- Term of the mortgage loan at the time of origination, in months.

26. *Amortization Term* -- For amortizing mortgage loans, the amortization term of the mortgage loan, in months.

27. *FHFBID Number* – Federal Housing Finance Board Identification Number of the member institution that initially provides the credit enhancement for the AMA.

28. *Number of Units* -- The number of units in the mortgaged property.

29. *Public Subsidy Program* – Code indicating whether the mortgaged property is involved in a public subsidy program and which level(s) of government are involved in the subsidy program (*i.e.*, Federal government only, other only, Federal government, etc.).

30. *Unit Class Level* -- The following data apply to unit types in a particular mortgaged property. The unit types are defined by the Banks for each property and are differentiated based on the number of bedrooms in the units and on the average contract rent for the units. A unit type must be included for each bedroom size category in the property:

APPENDIX B (continued)

Reporting Requirements for AMA That Are Multi-Family Residential Mortgage Loans or Multi-Family Residential Mortgage Loans Backing AM

A. Unit Type XX-Number of Bedroom(s) -- The number of bedrooms in the unit type;
B. Unit Type XX-Number of Units -- The number of units in the property within the unit type;
C. Unit Type XX-Average Reported Rent Level -- The average rent level for the unit type in whole dollars;
D. Unit Type XX-Average Reported Rent Plus Utilities -- The average reported rent level plus the utility cost for each unit in whole dollars; and
E. Unit Type XX-Tenant Income Indicator -- Indicates whether the tenant's income is less than 60 percent of area median income, greater than or equal to 60 percent but less than 80 percent of area median income, greater than or equal to 80 percent but less than 100 percent of area median income, or greater than or equal to 100 percent of area median income.

31. *Debt Service Coverage Ratio* -- Ratio of net operating income to debt service.

32. *ARM Index* – For ARMs only, index used for the calculation of interest on an ARM.

33. *ARM Margin* – For ARMs only, margin added to the index used for the calculation of the interest on an ARM.

34. *Adjustment Frequency* – For ARMs only, interest rate adjustment frequency in months.

35. *Negative Amortization* – For ARMs only, code indicating if amortization is negative.

36. *Prepayment Penalty Date* – Date that the application of a prepayment penalty ends.

Part II: Fields Reported For All Such Loans Outstanding in the Calendar Quarter:

37. *Bank District Flag* – Two-digit code designating the District Bank where the member institution that initially provides the credit enhancement for the AMA is located.

38. *Loan Number* – Bank assigned numeric identifier, unique to each mortgage loan within a Bank's AMA portfolio.

39. *Delinquency Status* – Code indicating the delinquency status of the mortgage loan at the end of the calendar quarter.

40. *Termination Date* – For mortgage loans that terminated during the reporting period, date on which the mortgage loan terminated.

41. *Termination Type* – For mortgage loans that terminated during the calendar quarter, code indicating the reason for the mortgage loan termination (*e.g.*, prepayment, foreclosure).

42. *Current Unpaid Principal Balance (UPB)* – UPB on the mortgage loan at the end of the calendar quarter.

43. *Current Coupon* – For ARMs only, mortgage interest rate on the mortgage loan at the end of the calendar quarter.

APPENDIX B (continued)

Reporting Requirements for AMA That Are Multi-Family Residential Mortgage Loans or Multi-Family Residential Mortgage Loans Backing AM

Part III: Fields Reported For Pools of Such Loans:

44. *Bank District Flag* – Two-digit code designating the District Bank where the member institution that initially provides the credit enhancement for the AMA is located.

45. *Pool Number* – Bank assigned numeric identifier for the pool of which the mortgage loan is a part; the Pool Number should be unique within a Bank's AMA portfolio.

46. *Participation Percentages* – Twelve separate fields indicating each Bank's percentage participation in the AMA-eligible pool or asset backed by such a pool, as of the date the Bank acquires any portion of the pool or asset.

47. *Pool Rating* – For pools of mortgage loans or assets backed by such mortgage loans, the putative or actual letter credit rating of the pool as of the date the Bank acquires any portion of the pool or asset backed by such pools.

48. *Pool Credit Enhancement* – The dollar amount of the credit enhancement required to bring the pool to the credit rating as specified by the Bank.

49. *Recalculated Pool Rating* – For pools of mortgage loans where the credit enhancement is recalculated during the calendar quarter, the recalculated putative or actual letter credit rating using the initial amount of the Pool Credit Enhancement.

50. *Recalculated Credit Enhancement* – For pools of mortgage loans that have the credit enhancement recalculated during the calendar quarter, the dollar amount of the credit enhancement required to bring the pool to the initial putative or actual letter credit rating.

[FR Doc. 05–21794 Filed 11–1–05; 8:45 am]
BILLING CODE 6725–01–C

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 009831–023.

Title: New Zealand/United States Container Lines Association.

Parties: Australia-New Zealand Direct Line; CP Ships USA, LLC; and Hamburg-Sud.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment removes P&O Nedlloyd Limited as a party to the agreement.

Agreement No.: 011834–002.

Title: Maersk Sealand/Hapag-Lloyd Mediterranean U.S. East Coast Slot Charter Agreement.

Parties: A.P. Moller Maersk A/S and Hapag-Lloyd Container Linie GmbH.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment expands the range of Spanish ports covered by the agreement and adds ports in France to the geographic scope of the agreement.

Dated: October 28, 2005.

By order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–21852 Filed 11–1–05; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Rescission of Order of Revocation

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to sections 14 and 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, 46 CFR part 515.

License Number : 018946NF.

Name: AMF Global Transportation, Inc.

Address: 16530 Jarvis Avenue, Elk Grove Village, IL 60007.

Order Published: FR: 10/5/05 (Volume 70, No. 192, Pg. 58223).

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 05–21848 Filed 11–1–05; 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

Caribbean West Indies Shipping Inc., 6710 Cornelius Street, Philadelphia, PA. Officers: Randolph Waithe, President. (Qualifying Individual) Mark K. Waithe, Director.

Embarque La Isla, Inc., 440 E. 182nd Street, Bronx, NY 10457. Officer: Nelson R. Bravo, President. (Qualifying Individual)

CN Worldwide B.V., Lichtenauerlaan 102–120, 3062 ME Rotterdam, The Netherlands. Officers: Tjeerd Greidanus, Director. (Qualifying Individual) Anita Ernesaks, Managing Director.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Transmax Logistics Corporation, 1550 E. Higgins Road, Suite 114, Elk Grove Village, IL 60007. Officers: Sharia J. Lee, President. (Qualifying Individual) Lewis S. Lee, Director.

Unity Logistics And Transportation, Inc., 9010 S.W. 137th Avenue, Suite 246, Miami, FL 33186. Officer: Pedro Streb, President. (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Euro Shippers Inc., 7667 West 95th Street, Suite 308, Hickory Hills, IL 60457. Officer: Ulick M. O'Sullivan, President. (Qualifying Individual).

Smart International Cargo Express, Inc., 1841 Carter Avenue, (Esq. 176 Street), Bronx, NY 10457. Officer: Eunice B. Acosta, President. (Qualifying Individual).

Carrie International Freight Services, LLC, 215 East Bay Street, Suite 201–L, Charleston, SC 29401. Officer: Donald O. Montgomery, Member. (Qualifying Individual)

Macro Express Services, 4164 Sta Monica Blvd., Los Angeles, CA 90029. Jabonillo Vincent, Sole Proprietor.

Dated: October 28, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–21849 Filed 11–1–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have 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
017466N	Compass Shipping, Inc., 525 Empire Blvd., Brooklyn, NY 11125	September 21, 2005.
283F	Saima Avendero USA, Inc., 550 Broad Street, Suite 1001, Newark, NJ 07102	August 4, 2003.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 05–21846 Filed 11–1–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before January 3, 2006.

ADDRESSES: You may submit comments, identified by FR Y–9, FR Y–11, or FR 2314 by any of the following methods:

• Agency Web Site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

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

• E–mail: *regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.

• FAX: 202/452–3819 or 202/452–3102.

• Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00a.m. and 5:00p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Long, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the revision, without extension, of the following reports:

1. Report title: Financial Statements for Bank Holding Companies.
Agency form number: FR Y–9C, FR Y–9LP, and FR Y–9SP
OMB control number: 7100–0128
Frequency: Quarterly and semiannually.
Reporters: Bank holding companies.
Annual reporting hours: FR Y–9C: 116,279; FR Y–9LP: 18,639; FR Y–9SP: 47,379.
Estimated average hours per response: FR Y–9C: 37.95; FR Y–9LP: 4.75; FR Y–9SP: 5.10.
Number of respondents: FR Y–9C: 766; FR Y–9LP: 981; FR Y–9SP: 4,645.
General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6)and (b)(8) of the Freedom of Information Act (5 U.S.C. §§522(b)(4), (b)(6) and (b)(8)).
Abstract: The FR Y–9C, FR Y–9LP, and FR Y–9SP are standardized financial statements for the consolidated bank holding company (BHC) and its parent. The FR Y–9 family of reports historically has been, and continues to be, the primary source of financial information on BHCs between on–site inspections. Financial information from these reports is used to detect emerging financial problems, to review performance and conduct pre–inspection analysis, to monitor and evaluate capital adequacy, to evaluate BHC mergers and acquisitions, and to analyze a BHC's overall financial condition to ensure safe and sound operations.

The FR Y–9C consists of standardized financial statements similar to the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No. 7100–0036) filed by commercial banks. The FR Y–9C collects consolidated data from the BHC. The FR Y–9C is filed by top–tier BHCs with total consolidated assets of $150 million or more and lower–tier BHCs that have total consolidated assets of $1 billion or more. (Under certain circumstances defined in the General Instructions, BHCs under $150 million may be required to file the FR Y–9C.) In addition, multibank holding companies with total consolidated assets of less than $150 million with debt outstanding to the general public or engaged in certain nonbank activities must file the FR Y–9C.

The FR Y–9LP includes standardized financial statements filed quarterly on a parent company only basis from each BHC that files the FR Y–9C. In addition, for tiered BHCs, a separate FR Y–9LP must be filed for each lower tier BHC.

The FR Y–9SP is a parent company only financial statement filed by smaller BHCs. Respondents include one–bank holding companies with total consolidated assets of less than $150 million and multibank holding companies with total consolidated assets of less than $150 million that meet certain other criteria. This form is a simplified or abbreviated version of the more extensive parent company only financial statement for large BHCs (FR Y–9LP). This report is designed to obtain basic balance sheet and income information for the parent company, information on intangible assets, and information on intercompany transactions.

Current actions: The Federal Reserve proposes to modify information collected on the FR Y–9C, FR Y–9LP and FR Y–9SP to (1) increase the asset–size threshold for filing the FR Y–9C and FR Y–9LP from $150 million to $500 million; (2) increase the asset–size threshold for filing the FR Y–9SP from under $150 million to under $500 million; (3) revise other current filing criteria affecting the reporting of the FR Y–9C, FR Y–9LP and FR Y–9SP; and (4) revise the text of the attestation requirement on the cover page of each report and require signatures specifically from the chief executive officer and chief financial officer. The Federal Reserve proposes the following revisions to the FR Y–9C: (1) add item on loans for purchasing and carrying securities; (2) add item for additional regulatory capital detail; (3) add items for further detail on construction, land development, and land loans; (4) add items for further detail on loans secured by nonfarm nonresidential properties; (5) redefine breakouts for lease financing receivables; (6) add items for further information on credit derivatives; (7) add items for further detail on mortgage banking activities; (8) reclassify reporting of annuity sales revenue; (9) add items for further detail on investment banking, advisory, brokerage, and underwriting income; (10) add items to identify certain secured borrowings; (11) remove threshold for reporting of life insurance assets; (12) revise scope of securitizations to be included in Schedule HC–S; (13) remove the FR Y–9C filing requirement for lower–tier BHCs with total assets of $1 billion or more; (14) delete or impose a reporting threshold on a number of items; and (15) make revisions to the reporting instructions. Finally, the Federal Reserve proposes to revise the FR Y–9SP by collecting two new items on Schedule SC–M, Memoranda, to identify total off–balance–sheet activities conducted either directly or through a nonbank subsidiary and to identify total debt and equity securities (other than trust preferred securities) outstanding that are registered with the Securities and Exchange Commission (SEC).

The Federal Reserve recognizes that several comments were received by the banking agencies on proposed Call

Report revisions that parallel some of these proposed revisions. The comments received on the Call Report proposal will also be taken into consideration for this proposal.

Proposed Revisions Not Related to Call Report Revisions

The Federal Reserve proposes to make the following revisions to the FR Y–9C effective as of March 31, 2006. The following proposed revisions are not related to the revisions proposed to the Call Report.

Filing Criteria: Asset–Size Threshold

The Federal Reserve proposes to increase the asset–size threshold of the FR Y–9C from $150 million to $500 million. BHCs with consolidated assets of less than $500 million generally would file the parent–only FR Y–9SP. The Federal Reserve further proposes to revise the other criteria used in determining whether a BHC is subject to consolidated FR Y–9C reporting requirements. The revised criteria would more accurately reflect current supervisory views of factors that would warrant consolidated financial reporting and compliance with the capital guidelines. However, the Federal Reserve would retain the current policy that allows a Reserve Bank to require a BHC to file consolidated financial reports if the Reserve Bank determines that such action is warranted for supervisory reasons.

The current reporting requirements that govern the frequency and the level of detail of financial reports filed by BHCs have been in place since 1986 and are principally driven by the asset size of the BHC. Generally, BHCs with consolidated assets of less than $150 million submit summary parent company financial data semi–annually (FR– Y)9SP). BHCs with consolidated assets of $150 million or more submit detailed consolidated (FR Y–9C) and parent company (FR Y–9LP) financial data quarterly. When these reporting thresholds were established, $150 million in consolidated assets represented a reasonable threshold for identifying those BHCs whose operations warranted more extensive consolidated reporting for monitoring risks to safety and soundness.

However, over the last two decades, inflation, industry consolidation, and normal asset growth of BHCs have caused the $150 million threshold to lose much of its relevance. While the number of BHCs with less than $500 million in consolidated assets has increased over this time frame, these BHCs hold a smaller percentage of total assets for all BHCs filing the FR Y–9C. The number of non–complex FR Y–9C respondents with consolidated assets of less than $500 million has increased by about 560, while their share of total assets of all FR Y–9C respondents has decreased from about 7 percent to about 4 percent. In addition, raising the threshold to $500 million goes well beyond the level (approximately $255 million) necessary to adjust the current threshold for inflation. The Federal Reserve believes that raising the threshold to $500 million achieves an appropriate balance between the goals of reducing regulatory burden and ensuring access to supervisory data necessary for the safety and soundness of BHCs.

One consideration in proposing to increase the threshold for filing the FR Y–9C is that the loss of data could potentially be an issue for BHC management. The Federal Reserve currently produces Bank Holding Company Performance Reports (BHCPRs) that compare a BHC's financial data to those of its peers. BHCs may use the BHCPRs to evaluate and monitor their financial performance. However, most of the BHCs that would be affected are shell, one–bank holding companies; therefore, the Uniform Bank Performance Report[1] should provide most of the information. Nevertheless, the Federal Reserve seeks public comment on any consolidated information BHC management may want to continue reporting and see from BHCs with between $150 million and $500 million in total assets for peer review or other internal management purposes.

Other Filing Criteria

The Federal Reserve's current risk–based and leverage–capital standards do not apply to BHCs with consolidated assets of less than $150 million if the parent holding company is not engaged in nonbank activity involving significant leverage and the parent holding company does not have a significant amount of debt held by the general public. If either of these additional criteria is met, the BHC would be deemed subject to the Federal Reserve's capital guidelines. The FR Y–9C reporting instructions use slightly different criteria and currently exempt BHCs with one bank subsidiary and less than $150 million in consolidated assets from filing consolidated statements and risk–based capital schedules even if they have public debt or engage in nonbanking activities involving significant leverage. The Federal Reserve separately has proposed to revise and expand the other criteria under which a BHC would be required to comply with the Federal Reserve's capital guidelines.[2] The Federal Reserve believes that for BHCs under $500 million in total consolidated assets, other than those BHCs that meet the additional criteria noted below, bank–level compliance with risk–based and leverage capital requirements would be sufficient for supervisory purposes. The Federal Reserve proposes to modify the FR Y–9C reporting criteria to conform directly with criteria proposed for applicability of these guidelines.

Specifically, the Federal Reserve proposes to require BHCs with consolidated assets of less than $500 million to comply with the Federal Reserve's capital guidelines and to continue to comply with the FR Y–9C and FR Y–9LP reporting requirements, if the holding company (1) is engaged in significant nonbanking activities either directly or through a nonbank subsidiary; (2) conducts significant off–balance–sheet activities, including securitizations or managing or administering assets for third parties, either directly or through a nonbank subsidiary; or (3) has a material amount of debt or equity securities (other than trust preferred securities) outstanding that are registered with the SEC.[3] While the incidence of BHCs with consolidated assets of less than $500 million meeting any of these criteria is expected to be infrequent, any such holding companies would be notified and given a reasonable timetable for meeting the consolidated capital and reporting requirements.

In addition, the Federal Reserve separately has proposed to amend its capital guidelines to make explicit the Federal Reserve's authority to subject a small BHC to the guidelines if the Federal Reserve determines that such action is warranted for supervisory purposes (comparable to existing to current instructions for FR Y–9C reporting requirements). Furthermore, the proposed amendments to the

[1] The Uniform Bank Performance Report is similar to the BHCPR and compares bank financial data to those of its peers.

[2] Refer to Federal Reserve Board press release of September 7, 2005. *http://www.federalreserve.gov/boarddocs/press/bcreg/2005/20050907/default.htm*

[3] As noted above, these proposed criteria would conform directly with proposed criteria for applicability of capital adequacy guidelines. Responsibility for determination whether such activities are significant or material for any given BHC would rest with the supervisory function at each Federal Reserve district bank. If a Reserve Bank finds that a BHC meet any of these criteria, the Reserve Bank would be responsible for notifying the BHC and establishing the time frame for meeting the capital adequacy guidelines and FR Y–9C reporting requirements.

guidelines would explicitly provide that a small BHC may voluntarily comply with the guidelines. The Federal Reserve proposes that a BHC electing to comply with the guidelines would be required to file the consolidated FR Y–9C. Any BHC that volunteers to file the FR Y–9C would be required to file a complete report and generally would not be permitted to revert back to filing the FR Y–9SP report in any subsequent periods.

Lower–tier Reporting Requirements—The Federal Reserve also proposes to eliminate the reporting exception requiring top–tier BHCs to submit an FR Y–9C for each lower–tier BHC with total consolidated assets of $1 billion or more. The Federal Reserve has determined that information from such lower–tier institutions is no longer needed for supervisory or safety and soundness reasons.

Schedule HC–C—Loans and Lease Financing Receivables

The Federal Reserve proposes to revise Schedule HC–C, item 9, All other loans, to break out a new item 9.a, Loans for purchasing or carrying securities (secured and unsecured). Current item 9 would be renumbered as 9.b. This item would be defined the same as a comparable item currently reported by banks on the Call Report and is predominantly composed of margin loans with broker–dealers. Margin loans have been growing at the BHC level, particularly due to significant growth in lending to hedge funds. The Federal Reserve proposes collecting this item in order to measure and monitor BHCs involvement in this higher risk activity.

Schedule HC–M—Memoranda

The Federal Reserve proposes to delete Schedule HC–M, item 7, Total assets of unconsolidated subsidiaries and associated companies. This item is no longer needed for supervisory and safety and soundness purposes.

Schedule HC–R—Regulatory Capital

The Federal Reserve proposes to add a new memorandum item 6, Market risk equivalent assets attributable to specific risk (included in Schedule HC–R, item 58). The Federal Reserve's risk–based capital standards require all BHCs with significant market risk to measure their market risk exposure and hold sufficient capital to mitigate this exposure. In general, a BHC is subject to the market risk capital guidelines if its consolidated trading activity, defined as the sum of trading assets and liabilities reported in its FR Y–9C for the previous quarter, equals: (1) 10 percent or more of the BHC's total assets as reported in its FR Y–C for the previous quarter or (2) $1 billion or more.

A BHC that is subject to the market risk guidelines must hold capital to support its exposure to general market risk and specific risk. General market risk means changes in the market value of covered positions resulting from broad market movements, such as changes in the general level of interest rates, equity prices, foreign exchange rates, or commodity prices. Covered positions include all positions in a BHCs trading account and foreign exchange and commodity positions, whether or not in the trading account. Specific risk means changes in the market value of specific positions due to factors other than broad market movements and includes event and default risk.

The specific risk exposure of specific positions is significantly higher than the general market risk of covered positions. The Federal Reserve proposes to break out market risk equivalent assets[4] attributable to specific risk to better measure and monitor the BHCs market risk position and to better compare such risk positions taken across BHCs subject to the market risk guidelines.

Instructions

In addition to modifying instructions to incorporate the proposed reporting changes, the Federal Reserve proposes to revise the following reporting instructions.

General Instructions—The Federal Reserve proposes to modify the reporting instructions under ''Who Must Report,'' section C, Shifts in Reporting Status: A top–tier BHC that reaches $500 million or more in total consolidated assets as of June 30 of the preceding year should begin reporting on the FR Y–9C in March of the current year. If a BHC reaches $500 million or more in total consolidated assets due to a business combination, then the BHC would be instructed to begin reporting the FR Y–9C beginning with the first quarterly report date following the effective date of the business combination. In general, once a BHC reaches or exceeds $500 million in total assets and begins filing the FR Y–9C, it should file a complete FR Y–9C going forward. If a BHC's total assets should subsequently fall to less than $500 million for four consecutive quarters, then the BHC may revert to filing the FR Y–9SP.

[4] A BHC's market risk equivalent assets is equal to its measure for market risk multiplied by 12.5 (the reciprocal of the minimum 8.0 percent capital ratio). For further information, see the Federal Reserve's risk–based capital standards.

Schedule HC–B—Securities – The Federal Reserve proposes to modify the reporting instructions for Schedule HC–B, memorandum item 2, Remaining maturity of debt securities, to instruct BHCs to report the remaining maturity of holdings of floating rate debt securities according to the amount of time remaining until the next repricing date. This instruction would be consistent with the current reporting treatment for a comparable item in the Call Report. The instructions for this item would also be expanded to define the terms fixed interest rate, floating rate, and next repricing date to make them consistent with the Call Report instructions.

Schedule HC–K—Quarterly Averages—The Federal Reserve proposes to modify Schedule HC–K, item 11, Equity capital, to no longer exclude net unrealized losses on marketable equity securities, other net unrealized gains and losses on available–for–sale securities, and accumulated net gains (losses) on cash flow hedges when calculating average equity capital. This revision would ensure a more accurate calculation of return on equity.

Proposed Revisions Related to Call Report Revisions

The Federal Reserve proposes to make the following revisions to the FR Y–9C to parallel proposed changes to the Call Report.

Attestation

The Federal Reserve proposes to revise the current attestation by one director of the BHC that he or she has reviewed the data filed and has transmitted a copy to the Board of Directors for their information. Given the importance placed upon the quality of the information reported, the Federal Reserve believes that the chief executive officer (or person performing similar functions) and chief financial officer (or person performing similar functions) are the most appropriate officers within a BHC to sign a declaration concerning the preparation of the data. The Federal Reserve recognizes that at some BHCs the same individual may perform the functions of both chief executive officer and chief financial officer. The note on the cover page would be replaced with the following text:

''We, the undersigned officers of this bank holding company, are responsible for establishing and maintaining adequate internal controls over financial reporting, including controls over regulatory reports. We attest that the Consolidated Financial Statements for Bank Holding Companies (including the

supporting schedules) for this report date have been prepared in accordance with the instructions issued by the Federal Reserve and to the best of our knowledge and belief are true and correct.''

This statement would be followed with the signatures and printed names of the chief executive officer (or person performing similar functions) and chief financial officer (or person performing similar functions) of the BHC and the date of these signatures.

Holdings of Asset–Backed Securities

Schedule HC–B, Securities collects a six–way breakdown of BHCs' holdings of asset–backed securities (not held for trading purposes) in items 5.a through 5.f.[5] Because BHCs with domestic offices only and less than $1 billion in total assets hold only a nominal percentage of the industry's investments in asset–backed securities, the Federal Reserve has determined that continuing to request a breakdown by category of these institutions' limited holdings of asset–backed securities is no longer warranted. Instead, these BHCs would report only their total holdings of asset–backed securities in Schedule HC–B. However, all BHCs with foreign offices and other BHCs with $1 billion or more in total assets would continue to report the existing breakdown of their asset–backed securities in this schedule.

Impact of Derivatives on Income

BHCs report the effect that their use of derivatives outside the trading account has had on their year–to–date interest income, interest expense, and net noninterest income in income statement (Schedule HI) memoranda items 10.a through 10.c. The amounts reported in these memoranda items are aggregates of all nontrading derivative positions and combine derivatives that may have substantially different underlying risk exposures (e.g., interest rate risk, foreign exchange risk, and credit risk). In recognition of proposed new data on credit derivatives (below), the Federal Reserve proposes to delete the three income statement memoranda items since they are of lesser utility.

Bankers Acceptances

The FR Y–9C balance sheet (Schedule HC) has long required BHCs to separately disclose the amount of their Customers' liability on acceptances outstanding (item 9) and their BHC's Liability on acceptances executed and outstanding (item 18) and provide an indication of whether the BHC has reduced the liabilities on acceptances executed and outstanding by the amount of any participations in bankers acceptances (Schedule HC–M, item 10). In addition, BHCs also report the amount of Participations in acceptances conveyed to others by the reporting bank holding company (Schedule HC–L, item 5). Over time, the volume of acceptance assets and liabilities as a percentage of industry assets and liabilities has declined substantially to a nominal amount, with only a small number of BHCs reporting these items. The Federal Reserve proposes to delete these four items and instruct BHCs to include any acceptance assets and liabilities in Other assets and Other liabilities, respectively, on the balance sheet and to include in the ''Other'' category of Schedule HC–F, Other Assets, and Schedule HC–G, Other Liabilities.

Construction, Land Development, and Other Land Loans

Construction, land development, and other land (CLD&OL) lending is a highly specialized set of activities with inherent risks that must be managed and controlled to ensure that these activities remain profitable. Management's ability to identify, measure, monitor, and control the risks from these types of loans through effective underwriting policies, systems, and internal controls is crucial to a sound lending program. In areas of the country that experience high levels of construction activity and an extremely competitive lending environment, these factors often lead to thinner profit margins on CLD&OL loans and looser underwriting standards. Moreover, the risk profiles, including loss rates, of CLD&OL loans vary across loan types because of differences in such factors as underwriting and repayment source. The Federal Reserve's real estate lending standards recognize these differences in risk, for example, by setting higher supervisory loan–to–value limits for 1–4 family residential construction loans than for other construction loans.

The Federal Reserve has seen substantial growth in the volume of CLD&OL loans in recent years. To improve the Federal Reserve's ability to monitor the construction lending activities of individual BHCs and the industry as a whole, the Federal Reserve proposes to obtain separate data on 1–4 family residential CLD&OL loans and all other CLD&OL loans. Such information would also enable the Federal Reserve to identify institutions that significantly shift between 1–4 family residential construction lending and other construction lending and to identify when institutions that had been solely 1–4 family residential construction lenders move into other types of construction lending.

Specifically, the Federal Reserve proposes to split the existing item for Construction, land development, and other land loans in the loan schedule (Schedule HC–C, item 1.a), the past due and nonaccrual schedule (Schedule HC–N, item 1.a), and the charge–offs and recoveries schedule (Schedule HI–B, item 1.a) into separate items for 1–4 family residential construction, land development, and other land loans and Other construction, land development, and other land loans. In addition, the Federal Reserve proposes to similarly split the item for Commitments to fund commercial real estate, construction, and land development loans secured by real estate in the off–balance–sheet items schedule (Schedule HC–L, item 1.c.(1)) into two items.

Loans Secured by Nonfarm Nonresidential Properties

Loans secured by nonfarm nonresidential properties (commercial real estate loans) include loans made to the occupants of such properties and loans to non–occupant investors. These two types of commercial real estate loans present different risk profiles. Loans secured by owner–occupied properties perform more like a commercial and industrial loan because the success of the occupant's business is the primary source of repayment. To ensure repayment of loans to non–occupant investors, the property must generate sufficient cash flow from the parties who are the occupants.

Because of the significant and growing level of BHC involvement in commercial real estate lending and the different risk characteristics of owner–occupied and other commercial properties, separate reporting of these two categories of commercial real estate would enhance the Federal Reserve's monitoring and risk–scoping capabilities. The Federal Reserve proposes to split the existing item for loans Secured by nonfarm nonresidential properties in the loan schedule (Schedule HC–C, item 1.e), the past due and nonaccrual schedule (Schedule HC–N, item 1.e), and the charge–offs and recoveries schedule (Schedule HI–B, part I, item 1.e) into separate items for owner–occupied nonfarm nonresidential properties and other nonfarm nonresidential properties.

When a commercial property that is partially occupied by the owner and partially occupied (or available to be

[5] In Schedule HC–B, the asset–backed securities reported in items 5.a through 5.f exclude mortgage–backed securities, which are reported separately in items 4.a.(1) through 4.b.(3) of the schedule.

occupied) by other parties, the property would be considered owner–occupied when the owner occupies more than half of the property's usable space. Properties such as hotels and motels would not be considered owner–occupied. The Federal Reserve requests comment on the reporting of partially owner–occupied properties and on any other definitional issues that may arise when determining whether to report a loan as secured by owner–occupied property.

Retail and Commercial Leases

BHCs currently report a breakdown of their lease financing receivables between those from U.S. and non–U.S. addressees in Schedule HC–C, items 10.a and 10.b, and certain related schedules. BHCs lease various types of property to various types of customers, and the current addressee breakdown, in which only a limited number of BHCs report having leases to non–U.S. addressees, does not provide satisfactory risk–related information about this type of financing activity. When reporting information on their loans that are not secured by real estate in the loan schedule and related schedules, BHCs distinguish, for example, between consumer (retail) loans and commercial loans. As with retail and commercial loans, there are differences between the underwriting of, and repayment sources for, retail and commercial leases.

The Federal Reserve believes that the different risk characteristics of these two types of leases warrant replacing the existing addressee breakdown of leases with a retail versus commercial lease breakdown in the schedules for loans and leases (Schedule HC–C, items 10.a and 10.b), past due and nonaccrual assets (Schedule HC–N, items 8.a and 8.b), and charge–offs and recoveries (Schedule HI–B, Part I, items 8.a and 8.b). Retail (consumer) leases would be defined in a manner similar to consumer loans (that is, as leases to individuals for household, family, and other personal expenditures). Commercial leases would encompass all other lease financing receivables.

Information on Credit Derivatives

The volume of credit derivatives, as measured by their notional amount, has increased significantly at BHCs over the past several years. A limited number of BHCs, almost all of which have in excess of $1 billion in assets, currently participate in the credit derivatives market. To gain a better understanding of the nature and trends of the credit derivative activities that are concentrated in a small number of large BHCs, the Federal Reserve proposes to expand the information collected in several schedules.

First, in Schedule HC–L, item 7, where BHCs currently report the notional amounts of the credit derivatives on which they are the guarantor and on which they are the beneficiary, BHCs participating in this activity would be required to provide a breakdown of these notional amounts by type of credit derivative: credit default swaps, total return swaps, credit options, and other credit derivatives. BHCs would also report the maximum amounts they would pay and receive on credit derivatives on which they are the guarantor and on which they are the beneficiary, respectively.

Second, in Schedule HC–R, memorandum item 2, where BHCs currently present a maturity distribution of their derivative contracts that are subject to the risk–based capital requirements, credit derivatives would be added as a new category of derivatives with their remaining maturities reported separately for those that are investment grade and those that are subinvestment grade.

Third, in Schedule HI, memorandum item 9, BHCs that reported average trading assets of $2 million or more for any quarter of the preceding calendar year currently provide a four–way breakdown of trading revenue by type of risk exposure. When BHCs that must complete memorandum item 9 hold credit derivatives for trading purposes, they have to report the revenue from these derivatives in one of the four existing risk exposure categories, none of which is particularly suitable for reporting such revenue. Accordingly, the Federal Reserve proposes to add a new risk exposure category for credit derivatives. This information would address the current weakness in the reporting of trading revenue, but, more importantly, it would enable the Federal Reserve to begin to identify the extent to which credit derivatives held for trading purposes contribute to a BHC's trading revenue each period and over time.

Finally, the Federal Reserve proposes to replace memorandum item 10 to Schedule HI, Income Statement, with an item to collect the changes in fair value recognized in earnings on credit derivatives that are held for purposes other than trading (for example, to economically hedge credit exposures arising from nontrading assets, such as available–for–sale securities or loans held for investment,[6] or unused lines of credit). In this regard, the Federal Reserve reiterates that credit derivatives held for purposes other than trading should not be reported as trading assets or liabilities and the changes in fair value of such credit derivatives should not be reported as trading revenue. Consistent with the existing guidance in the Glossary entry for ''Derivative contracts'' in the FR Y–9C instructions, credit derivatives held for purposes other than trading with positive and negative fair values should be reported in Other assets and Other liabilities on the balance sheet (Schedule HC). Changes in fair value of derivatives held for purposes other than trading that are not designated as hedging instruments should be reported consistently as either Other noninterest income or Other noninterest expense in the income statement.

1–4 Family Residential Mortgage Banking Activities

Mortgage banking activities, particularly those involving closed–end 1–4 family residential mortgages, have become an increasingly important line of business for many BHCs. Mortgage banking revenues are a significant component of earnings for these institutions and have been critical to the recent record earnings achieved by the banking industry as a whole. The growth of the industry's mortgage banking activities also reflects the central role that securitization mechanisms now play in the mortgage market.

However, these activities and the revenues they generate can be quite volatile over the business and interest rate cycle. Furthermore, a BHC's mortgage banking operations can raise significant management and supervisory concerns related to credit, liquidity, interest rate, and operational risk. Understanding the importance of mortgage banking activities to an institution's financial condition and risk profile requires information about the transactional flows associated with residential mortgages. In this regard, the Office of Thrift Supervision (OTS) has collected a large set of cash flow data on mortgage loan disbursements, purchases, and sales in the Thrift Financial Report (TFR) (Form 1313, OMB No. 1550–0023) for more than a decade.

After considering the OTS's reporting requirements as well as the types of information commonly disclosed by

[6] Loans held for investment are loans that that the bank has the intent and ability to hold for the foreseeable future or until maturity or payoff.

banking organizations with large mortgage banking operations, the Federal Reserve proposes to add a new Schedule HC–P that would contain a series of items that are focused on closed–end 1–4 family residential mortgage loans, with data reported separately for first liens and junior liens. The new items would cover loans originated, purchased, and sold during the quarter, loans held for sale at quarter–end, and the year–to–date noninterest income earned from closed–end 1–4 family residential mortgage banking activities. This income would consist of the portion of a BHC's Net servicing fees, Net securitization income, and Net gains (losses) on sales of loans and leases (Schedule HI, items 5.f, 5.g, and 5.i) attributable to closed–end 1–4 family residential mortgage loans.

The proposed new items would be reported by any BHC with $1 billion or more in total assets or by any BHC that has a bank subsidiary that is required to report this information by the bank subsidiary's primary regulator. For loans originated, purchased, and sold during the quarter, BHCs would report the principal amount of these loans. Originations would include those loans for which the origination and underwriting process was handled by the BHC or a consolidated subsidiary of the BHC, but would exclude those loans for which the origination and underwriting process was handled by another party, including a correspondent or mortgage broker, even if the loan was closed in the name of the BHC or a consolidated subsidiary of the BHC. Such loans would be treated as purchases as would acquisitions of loans closed in the name of another party. Sales of loans would include those transfers of loans that have been accounted for as sales in accordance with generally accepted accounting principles (that is, where the loans are no longer included in the BHC's consolidated total assets). Loans held for sale at quarter–end would be reported at the lower of cost or fair value, consistent with their presentation in the FR Y–9C balance sheet. The Federal Reserve requests comment on the reporting approach discussed in this paragraph.

Income from Annuity Sales

In the income statement (Schedule HI), BHCs currently report commissions and fees from sales of annuities (fixed, variable, and deferred) and related referral and management fees as a component of item 5.h.(2), Income from other insurance activities.[7] Because annuities are deemed to be financial investment products rather than insurance, the Federal Reserve proposes to revise the instructions for item 5.h.(2) and item 5.d, Investment banking, advisory, brokerage, and underwriting fees and commissions, by moving the references to annuities in the former item to the latter item.

Investment Banking, Advisory, Brokerage, and Underwriting Income

As the caption for Schedule HI, item 5.d, Investment banking, advisory, brokerage, and underwriting fees and commissions, indicates, this income statement item commingles noninterest income from a variety of activities. In order to better understand the sources of BHCs' noninterest income, the Federal Reserve proposes to distinguish between banks' investment banking (dealer) activities and their sales (brokerage) activities by splitting item 5.d (after moving commissions and fees from annuity sales and related income into this income statement category from item 5.h.(2) as discussed in the preceding section) into three separate items. As revised, item 5.d would be subdivided into items for Fees and commissions from securities brokerage, Fees and commissions from annuity sales, and Investment banking, advisory, and underwriting fees and commissions. Securities brokerage income would include fees and commissions from sales of mutual funds and from purchases and sales of other securities and money market instruments for customers (including other financial institutions) where the BHC is acting as agent.

Certain Secured Borrowings

When BHCs raise funds from sources other than deposit liabilities, they may do so on a secured or unsecured basis. Securities sold under agreements to repurchase (Schedule HC, item 14.b) always represent secured borrowings, whereas Subordinated notes and debentures (Schedule HC, item 19.a) must be unsecured. However, amounts included in Federal funds purchased in domestic offices (Schedule HC, item 14.a) and Other borrowed money (Schedule HC–M, item 14) can be secured or unsecured, but this cannot be determined at present from the FR Y–9C. This uncertainty adversely affects the assessment of BHCs' liquidity positions. Moreover, as a BHC's condition deteriorates, it usually encounters increasing difficulty in rolling over existing unsecured debt or borrowing additional funds on an unsecured basis.

Thus, to better understand the structure of BHCs' nondeposit liabilities and the effect of these liabilities on liquidity, the Federal Reserve proposes to add two items to Schedule HC–M (items 23.a and 23.b) in which banks would report the secured portion of their Federal funds purchased and their Other borrowed money.

Life Insurance Assets

BHCs include their holdings of life insurance assets (that is, the cash surrender value reported to the BHC by the insurance carrier, less any applicable surrender charges not reflected by the carrier in this reported value) in Schedule HC–F, item 5, Other assets. If the carrying amount of a BHC's life insurance assets included in item 5 exceed 25 percent of its Other assets, the BHC must disclose this carrying amount in item 5.a.

In December 2004, the Office of the Controller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the OTS issued an Interagency Statement on the Purchase and Risk Management of Life Insurance to provide guidance to institutions to help ensure that their risk management processes for bank–owned life insurance (BOLI) are consistent with safe and sound banking practices. Given the risks associated with BOLI, the Interagency Statement advises institutions that it is generally not prudent for an institution to hold BOLI with an aggregate cash surrender value that exceeds 25 percent of the institution's capital as measured in accordance with its primary federal regulator's concentration guidelines. Although more than 40 percent of all BHCs report the amount of their life insurance assets in item 5.a under the current disclosure threshold of 25 percent of Other assets, this reporting mechanism does not ensure that the Federal Reserve is able to monitor whether all BHCs holding life insurance assets are approaching or have exceeded the concentration threshold of 25 percent of capital. As a consequence, the Federal Reserve proposes to revise Schedule HC–F, item 5.a, by removing the disclosure threshold of 25 percent of Other assets. The Federal Reserve notes that all savings associations are currently required to report the amount

[7] However, commissions and fees from sales of annuities by a BHCs trust department (or a consolidated trust company subsidiary) that are executed in a fiduciary capacity are to be reported in Income from fiduciary activities in Schedule HI, item 5.a, and income from sales of annuities to BHC customers by the BHC's securities brokerage subsidiary are reported in Investment banking, advisory, brokerage, and underwriting fees and commissions in Schedule HI, item 5.d.

of their life insurance assets in the TFR on Schedule SC, lines SC615 and SC625.

Scope of Securitizations to be Included in Schedule HC–S

In column G of Schedule HC–S, Servicing, Securitization, and Asset Sale Activities, BHCs report information on securitizations and on asset sales with recourse or other seller–provided credit enhancements involving loans and leases other than those covered in columns A through F. Although the scope of Schedule HC–S was intended to cover all of a BHC's securitizations and credit–enhanced asset sales, as currently structured column G does not capture transactions involving assets other than loans and leases. As a result, securitization transactions involving such assets as securities, for example, have not been reported in Schedule HC–S. Therefore, the Federal Reserve proposes to revise the scope of column G to encompass All Other Loans, All Leases, and All Other Assets to ensure that they can identify and monitor the full range of BHCs' involvement in and credit exposure to securitizations and asset sales. The proposed change in the scope of column G is expected to affect only a nominal number of BHCs.

Instructional Clarification

BHCs report the outstanding principal balance of assets serviced for others in Schedule HC–S, memorandum item 2. In memoranda items 2.a and 2.b, the amounts of 1–4 family residential mortgages serviced with recourse and without recourse, respectively, are reported. Memorandum item 2.c covers all other financial assets serviced for others, but BHCs are required to report the amount of such servicing only if the servicing volume is more than $10 million. The instructions for memoranda items 2.a and 2.b do not explicitly define 1–4 family residential mortgages. However, the caption for column A of the body of Schedule HC–S is 1–4 family residential loans, which the instructions for column A describe as closed–end loans secured by first or junior liens on 1–4 family residential properties as defined for Schedule HC–C, items 1.c.(2)(a) and (b).

Some institutions have asked whether memoranda items 2.a and 2.b should include servicing of home equity lines of credit because such lines are also secured by 1–4 family residential properties. Information on securtizations and asset sales involving home equity lines is reported in column B of the body of Schedule HC–S. To resolve the questions about the scope of memoranda items 2.a and 2.b, the Federal Reserve proposes to clarify the instructions by stating that these two items should include servicing of closed–end loans secured by first or junior liens on 1–4 family residential properties only. Servicing of home equity lines would be included in memorandum item 2.c.

FR Y–9LP

The Federal Reserve proposes to make the following revisions to the FR Y–9LP effective as of March 31, 2006.

Filing Criteria

The Federal Reserve proposes to increase the asset–size threshold of the FR Y–9LP from $150 million to $500 million. The Federal Reserve further proposes to modify the other criteria and include additional criteria that would be used in determining whether a BHC is subject to FR Y–9LP filing requirements.

Specifically, the Federal Reserve proposes to require BHCs with consolidated assets of less than $500 million to comply with the Federal Reserve's capital guidelines, and to continue to comply with the FR Y–9C and FR Y–9LP reporting requirements, if the holding company (1) is engaged in significant nonbanking activities either directly or through a nonbank subsidiary; (2) conducts significant off–balance–sheet activities, including securitizations or managing or administering assets for third party, either directly or through a nonbank subsidiary; or (3) has a material amount debt or equity securities (other than trust preferred securities) outstanding that are registered with the SEC. While the incidence of BHCs with consolidated assets of less than $500 million meeting any of these criteria is expected to be infrequent, any such BHCs would be notified and given a reasonable timetable for meeting the consolidated capital and reporting requirements.

The proposed changes are consistent with the proposed revisions to filing criteria to the FR Y–9C, as fully described above. These filing requirements would apply to all BHCs in multi–tiered organizations.

Attestation

The Federal Reserve proposes to revise the current attestation of one director of the BHC that he or she has reviewed the data filed and has transmitted a copy of the data to the Board of Directors for their information. Given the importance placed upon the quality of the information reported, the Federal Reserve believes that the chief executive officer (or person performing similar functions) and chief financial officer (or person performing similar functions) are the most appropriate officers within a BHC to sign a declaration concerning the preparation of the report. The Federal Reserve recognizes that at some BHCs the same individual may perform the functions of both chief executive officer and chief financial officer. The note on the cover page would be replaced with the following text:

''We, the undersigned officers of this bank holding company, are responsible for establishing and maintaining adequate internal controls over financial reporting, including controls over regulatory reports. We attest that the Parent Company Only Financial Statements for Large Bank Holding Companies (including the supporting schedules) for this report date have been prepared in accordance with the instructions issued by the Federal Reserve and to the best of our knowledge and belief are true and correct.''

This statement would be followed with the signatures and printed names of the chief executive officer (or person performing similar functions) and chief financial officer (or person performing similar functions) of the BHC and the date of these signatures.

Instructions

Instructions would be clarified in an attempt to achieve greater consistency in reporting by respondents.

FR Y–9SP

The Federal Reserve proposes to make the following changes to the FR Y–9SP effective as of June 30, 2006.

Filing Criteria

The Federal Reserve proposes to increase the asset–size threshold of the FR Y–9SP from companies with total consolidated assets of less than $150 million to companies with total consolidated assets of less than $500 million. The Federal Reserve further proposes to modify the other criteria and include additional criteria that would be used in determining whether a BHC is subject to FR Y–9SP filing requirements.

Specifically, the Federal Reserve proposes to require BHCs with consolidated assets of less than $500 million to comply with the Federal Reserve's capital guidelines, and to continue to comply with the FR Y–9C and FR Y–9LP reporting requirements, if the holding company (1) is engaged in significant nonbanking activities either directly or through a nonbank subsidiary; (2) conducts significant off–balance–sheet activities, including securitizations or managing or

administering assets for third party, either directly or through a nonbank subsidiary; or (3) has a material amount debt or equity securities (other than trust preferred securities) outstanding that are registered with the SEC.

Although the incidence of BHCs with consolidated assets of less than $500 million meeting any of these criteria is not expected to be frequent, information is not currently available to identify BHCs meeting the second and third criteria. Therefore the Federal Reserve proposes to collect two new items on Schedule SC–M, Memoranda, to identify total off–balance–sheet activities conducted either directly or through a nonbank subsidiary and to identify total debt and equity securities (other than trust preferred securities) outstanding that are registered with the SEC. BHCs meeting any of the criteria would be notified and given a reasonable timetable for meeting the consolidated capital and reporting requirements.

Attestation

The Federal Reserve proposes to revise the current attestation of one director of the BHC that he or she has reviewed the data filed and has transmitted a copy of the data to the Board of Directors for their information. Given the importance placed upon the quality of the information reported, the Federal Reserve believes that the chief executive officer (or the person performing similar functions) and chief financial officer (or the person performing similar functions) are the most appropriate officers within a BHC to sign a declaration concerning the preparation of the report. The Federal Reserve recognizes that at some BHCs the same individual may perform the functions of both chief executive officer and chief financial officer. The note on the cover page would be replaced with the following text:

''We, the undersigned officers of this bank holding company, are responsible for establishing and maintaining adequate internal controls over financial reporting, including controls over regulatory reports. We attest that the Parent Company Only Financial Statements for Small Bank Holding Companies (including the supporting schedules) for this report date have been prepared in accordance with the instructions issued by the Federal Reserve and to the best of our knowledge and belief are true and correct.''

This statement would be followed with the signatures and printed names of the chief executive officer (or person performing similar functions) and chief financial officer (or person performing similar functions) of the BHC and the date of these signatures.

Instructions

In addition to modifying instructions to incorporate the proposed reporting changes, instructions would be revised and clarified in an attempt to achieve greater consistency in reporting by respondents.

2. Report title: Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies.
Agency form number: FR Y–11 and FR Y–11S.
OMB control number: 7100–0244.
Frequency: Quarterly and annually.
Reporters: Bank holding companies
Annual reporting hours: FR Y–11 (quarterly): 24,725; FR Y–11 (annual): 1,769; FR Y–11S (annual): 1,195
Estimated average hours per response: FR Y–11 (quarterly): 6.25; FR Y–11 (annual): 6.25; FR Y–11S (annual): 1.0
Number of respondents: FR Y–11 (quarterly): 989; FR Y–11 (annual): 283; FR Y–11S (annual): 1,195
General description of report: This information collection is mandatory (12 U.S.C. §§ 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6)and (b)(8) of the Freedom of Information Act [5 U.S.C. §§ 522(b)(4), (b)(6) and (b)(8)].
Abstract: The FR Y–11 reports collect financial information for individual U.S. nonbank subsidiaries of domestic bank holding companies (BHCs). BHCs file the FR Y–11 on a quarterly or annual basis according to filing criteria or file the FR Y–11S annually. The FR Y–11 data are used with other BHC data to assess the condition of BHCs that are heavily engaged in nonbanking activities and to monitor the volume, nature, and condition of their nonbanking operations.
Current Actions: The Federal Reserve proposes to raise the asset–size threshold for filing the quarterly FR Y–11 to make it consistent with the proposed filing threshold for reporting the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C; OMB No. 7100–0128) and to further reduce reporting burden. The Federal Reserve also proposes to (1) add one new equity capital component on the balance sheet for reporting partnership interests and (2) reclassify reporting of certain annuity sales revenue on the income statement. The Federal Reserve also proposes to revise several balance sheet memoranda items to capture securitization information on transactions involving assets other than loans. No revisions are proposed to the content of the FR Y–11S; however, several respondents would shift to filing the FR Y–11S because of the proposed threshold revisions.

Revisions to Filing Criteria

The Federal Reserve proposes to revise the reporting criteria for the quarterly FR Y–11 to be consistent with the proposed threshold for the FR Y–9C and reduce reporting burden. Specifically, the Federal Reserve proposes that a BHC must file the FR Y–11 quarterly for its subsidiary if the subsidiary is owned or controlled by a top–tier BHC that files the FR Y–9C[8] and the subsidiary has (a) total assets of $1 billion or more, or (b) total off–balance–sheet activities of at least $5 billion, or (c) equity capital of at least 5 percent of the top–tier BHC's consolidated equity capital; or (d) operating revenue of at least 5 percent of the top–tier BHC's consolidated operating revenue.

Currently the primary criterion for determining quarterly reporting for the FR Y–11 is linked to the asset–size threshold for FR Y–9C reporting. Retaining the current asset–size threshold of $150 million may cause an inconsistency by requiring a BHC to file quarterly nonbank subsidiary reports for certain nonbank subsidiaries even when the BHC is not required to file the FR Y–9C quarterly. Revising the threshold for nonbank subsidiary reporting as described above would maintain consistency. Linking the primary nonbank reporting criterion to whether the BHC files a FR Y–9C would trigger the quarterly filing of the nonbank reports by nonbank subsidiaries meeting the filing requirements. If the BHC has assets less than $500 million but is engaged in significant activities that warrant filing of the FR Y–9C and meets one or more of the additional FR Y–11 quarterly reporting criteria, the Federal Reserve believes that it is also necessary for supervisory purposes to collect nonbank subsidiary reports on a quarterly basis.

As currently required, a BHC must file the FR Y–11 for any nonbank subsidiary that satisfies the quarterly filing criteria

[8] The Federal Reserve is proposing to raise the asset–size threshold for purposes of consolidated FR Y–9C reporting, the Small Bank Holding Company Policy Statement and the Capital Guidelines from $150 million to $500 million. In addition, a limited number of holding companies with assets less than $500 million may be required to file the FR Y–9C because they meet certain conditions.

for any quarter during the calendar year and must continue to report quarterly for the remainder of the calendar year even if the nonbank subsidiary no longer satisfies the requirements for quarterly reporting. The Federal Reserve proposes to modify this reporting requirement to be more consistent with the FR Y–9C. The Federal Reserve proposes to revise the reporting instructions for quarterly filers under ''Who Must Report'' to indicate that if a nonbank subsidiary meets the criteria for quarterly filing as of June 30 of the preceding year, its BHC should begin reporting the FR Y–11 quarterly for the nonbank subsidiary beginning in March of the current year and continue to report for the entire calendar year. In addition, if a nonbank subsidiary meets the quarterly filing criteria due to a business combination, then the BHC would report the FR Y–11 quarterly beginning with the first quarterly report date following the effective date of the business combination. If a nonbank subsidiary subsequently does not meet the quarterly filing criteria for four consecutive quarters, then the BHC would revert to annual filing.

Schedule IS–Income Statement

The Federal Reserve proposes to change the category of noninterest income in which nonbank subsidiaries report income from certain sales of annuities from item 5.a.(8), Insurance commissions and fees, to item 5.a.(4), Investment banking, advisory, brokerage, and underwriting fees and commissions, to be consistent with the proposed revision to the FR Y–9C. Currently, nonbank subsidiaries report income from the sales of annuities and related commissions and fees in item 5.a.(8). Since annuities are deemed to be financial investment products rather than insurance, the Federal Reserve proposes to revise the instructions for item 5.a.(8) and item 5.a.(4) by moving the reference to annuities in the former item to the latter item.

Schedule BS–M–Memoranda

The Federal Reserve proposes to expand the scope of item 2.a. Number of loans in servicing portfolio, item 2.b, Dollar amount of loans in servicing portfolio, and item 3, Loans that have been securitized and sold without recourse with servicing rights retained, to include assets other than loans. The captions and instructions for these items would be revised to include other assets. The proposed change would ensure that the Federal Reserve can monitor the full range of the nonbank subsidiaries' involvement in securitization.

Schedule BS–Balance Sheet

The Federal Reserve proposes to add a new item, 18.e, General and limited partnership shares and interests, renumber current item, 18.e, Other equity capital components, as item 18.f., and renumber current item 18.f, Total equity capital, as item 18.g. Currently, the instructions for item 18, Equity capital, directs subsidiaries that are not corporate in form (that is, those that do not have capital structures consisting of capital stock and the other components of equity capital currently listed under item 18) to report their entire net worth in item 18.f, Total equity. The reporting form and the instructions for item 18.f, Total equity, state that item 18.f must equal the sum of the components of item 18. However, equity capital of those entities not in corporate form cannot appropriately be reported in any of the components of item 18. The proposed item and clarifications to the instructions for item 18 would remove this inconsistency and improve the accuracy of the information reported. In addition, the Federal Reserve proposes to clarify that Schedule IS–A, Changes in Equity Capital, item 6, Other adjustments to equity capital, should include contributions and distributions to and from partners or limited liability company (LLC) shareholders when the company is a partnership or a LLC. Schedule IS–A, item 6 is a component of Schedule IS–A, item 7, Total equity at end of current period. Schedule IS–A, item 7 must equal Schedule BS, item 18.f, Total equity.

3. Report title: Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations.
Agency form number: FR 2314 and FR 2314S.
OMB control number: 7100–0073.
Frequency: Quarterly and annually.
Reporters: Foreign subsidiaries of U.S. state member banks, bank holding companies, and Edge or agreement corporations.
Annual reporting hours: FR 2314 (quarterly): 4,800; FR 2314 (annual): 950; FR 2314S (annual): 255
Estimated average hours per response: FR 2314 (quarterly): 6.25; FR 2314 (annual): 6.25; FR 2314S (annual): 1.0
Number of respondents: FR 2314 (quarterly): 192; FR 2314 (annual): 152; FR 2314S (annual): 255
General description of report: This information collection is mandatory (12 U.S.C. §§ 324, 602, 625, and 1844). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6) and (b)(8) of the Freedom of Information Act [5 U.S.C. §§ 522(b)(4) (b)(6) and (b)(8)].
Abstract: The FR 2314 reports collect financial information for direct or indirect foreign subsidiaries of U.S. state member banks (SMBs), Edge and agreement corporations, and BHCs. Parent organizations (SMBs, Edge and agreement corporations, or BHCs) file the FR 2314 on a quarterly or annual basis according to filing criteria or file the FR 2314S annually. The FR 2314 data are used to identify current and potential problems at the foreign subsidiaries of U.S. parent companies, to monitor the activities of U.S. banking organizations in specific countries, and to develop a better understanding of activities within the industry, in general, and of individual institutions, in particular.
Current Actions: The Federal Reserve proposes to raise the asset–size threshold for filing the quarterly FR 2314 to make it consistent with the proposed filing threshold for reporting the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C; OMB No. 7100–0128) and to further reduce reporting burden. The Federal Reserve also proposes to (1) add one new equity capital component on the balance sheet for reporting partnership interests and (2) reclassify reporting of certain annuity sales revenue on the income statement. The changes in the reporting thresholds would have no immediate effect on the FR 2314 panel because there are currently no quarterly filers owned by parent organizations with assets less than $500 million.

Revisions to Filing Criteria

The Federal Reserve proposes to revise the reporting criteria for the quarterly FR 2314 to be consistent with the proposed threshold for the FR Y–9C and reduce reporting burden. Specifically, the Federal Reserve proposes that a BHC must file the FR 2314 quarterly for its subsidiary if the subsidiary is owned or controlled by a parent U.S. BHC that files the FR Y–9C or a state member bank or an Edge or agreement cooperation that has total consolidated assets equal to or greater than $500 million and the subsidiary has (a) total assets of $1 billion or more, or (b) total off–balance–sheet activities of at least $5 billion, or (c) equity capital of at least 5 percent of the top–tier organization's consolidated equity capital, or (d) operating revenue of at least 5 percent of the top–tier organization's consolidated operating revenue.

Currently the primary criterion for determining quarterly reporting for the FR 2314 is linked to the asset–size threshold for FR Y–9C reporting. Retaining the current asset–size threshold of $150 million may cause an inconsistency by requiring a BHC to file quarterly nonbank subsidiary reports for certain nonbank subsidiaries even when the BHC is not required to file the FR Y–9C quarterly. Revising the threshold for nonbank subsidiary reporting as described above would maintain consistency. Linking the primary nonbank reporting criterion to whether the BHC files a FR Y–9C would trigger the quarterly filing of the nonbank reports by nonbank subsidiaries meeting the filing requirements. If the BHC has assets less than $500 million but is engaged in significant activities that warrant filing of the FR Y–9C and meets one or more of the additional FR 2314 quarterly reporting criteria, the Federal Reserve believes that it is also necessary for supervisory purposes to collect nonbank subsidiary reports on a quarterly basis.

The criteria for filing the FR 2314 would be revised to maintain the consistency in the reporting criteria for nonbank subsidiary reports. Revising the quarterly reporting threshold for the FR 2314 filers would have no immediate effect on the panel because currently there are no quarterly filers owned by parent organizations with assets less than $500 million. However, the Federal Reserve believes that there may be a small number of additional FR 2314 reports filed for subsidiaries owned by a BHC that has assets under $500 million and that files the FR Y–9C because they meet certain conditions.

As currently required, a parent organization must file the FR 2314 for any nonbank subsidiary that satisfies the quarterly filing criteria for any quarter during the calendar year and must continue to report quarterly for the remainder of the calendar year even if the nonbank subsidiary no longer satisfies the requirements for quarterly reporting. The Federal Reserve proposes to modify this reporting requirement to be more consistent with the FR Y–9C. The Federal Reserve proposes to revise the reporting instructions for quarterly filers under ''Who Must Report'' to indicate that if a nonbank subsidiary meets the criteria for quarterly filing as of June 30 of the preceding year, its parent organization should begin reporting the FR 2314 quarterly for the nonbank subsidiary beginning in March of the current year and continue to report for the entire calendar year. In addition, if a nonbank subsidiary meets the quarterly filing criteria due to a business combination, then the parent organization would report the FR 2314 quarterly beginning with the first quarterly report date following the effective date of the business combination. If a nonbank subsidiary subsequently does not meet the quarterly filing criteria for four consecutive quarters, then the parent organization would revert to annual filing.

Schedule IS–Income Statement

The Federal Reserve proposes to change the category of noninterest income in which nonbank subsidiaries report income from certain sales of annuities from item 5.a.(8), Insurance commissions and fees, to item 5.a.(4), Investment banking, advisory, brokerage, and underwriting fees and commissions, to be consistent with the proposed revision to the FR Y–9C. Currently, nonbank subsidiaries report income from the sales of annuities and related commissions and fees in item 5.a.(8). Since annuities are deemed to be financial investment products rather than insurance, the Federal Reserve proposes to revise the instructions for item 5.a.(8) and item 5.a.(4) by moving the reference to annuities in the former item to the latter item.

Schedule BS–Balance Sheet

The Federal Reserve proposes to add a new item, 18.e, General and limited partnership shares and interests, renumber current item, 18.e, Other equity capital components, as item 18.f., and renumber current item 18.f, Total equity capital, as item 18.g. Currently, the instructions for item 18, Equity capital, directs subsidiaries that are not corporate in form (that is, those that do not have capital structures consisting of capital stock and the other components of equity capital currently listed under item 18) to report their entire net worth in item 18.f, Total equity. The reporting form and the instructions for item 18.f, Total equity, state that item 18.f must equal the sum of the components of item 18. However, equity capital of those entities not in corporate form cannot appropriately be reported in any of the components of item 18. The proposed item and clarifications to the instructions for item 18 would remove this inconsistency and improve the accuracy of the information reported. In addition, the Federal Reserve proposes to clarify that Schedule IS–A, Changes in Equity Capital, item 6, Other adjustments to equity capital, should include contributions and distributions to and from partners or limited liability company (LLC) shareholders when the company is a partnership or a LLC. Schedule IS–A, item 6 is a component of Schedule IS–A, item 7, Total equity at end of current period. Schedule IS–A, item 7 must equal Schedule BS, item 18.f, Total equity.

Board of Governors of the Federal Reserve System, October 25, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6057 Filed 11–1–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collections of information is necessary for the proper performance of the Federal

Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before January 3, 2005.

ADDRESSES: You may submit comments, identified by Reg B or Reg E, by any of the following methods:

• Agency Web Site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

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

• E–mail: *regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.

• FAX: 202/452–3819 or 202/452–3102.

• Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. All public comments are available from the Board's web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Long, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposals to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

1. Report title: Recordkeeping and Disclosure Requirements in Connection with Regulation B (Equal Credit Opportunity)
Agency form number: Reg B
OMB control number: 7100–0201
Frequency: Event–generated
Reporters: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and Edge and agreement corporations.
Annual reporting hours: 189,540 hours
Estimated average hours per response: Notice of action, 2.5 minutes; credit history reporting, 2 minutes; recordkeeping for applications & actions, 8 hours; monitoring data, 0.50 minutes; appraisal report upon request, 5 minutes; notice of right to appraisal, 0.25 minutes; recordkeeping of self test, 2 hours; recordkeeping of corrective action, 8 hours; and disclosure of optional self–test, 1 minute.
Number of respondents: 1,341
General description of report: This information collection is mandatory (15 U.S.C. 1691 (b)(a)(1)). The adverse action disclosure is confidential between the institution and the consumer involved. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 USC 522 (b)).
Abstract: The Equal Credit Opportunity Act and Regulation B prohibit discrimination in any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age, or other specified bases. To aid in implementation of this prohibition, the statute and regulation also subject creditors to various mandatory disclosure requirements, notification provisions, credit history reporting, monitoring rules, and recordkeeping requirements. These requirements are triggered by specific events and disclosures must be provided within the time periods established by the Act and regulation.

2. Report title: Recordkeeping and Disclosure Requirements in Connection with Regulation E (Electronic Funds Transfer)
Agency form number: Reg E
OMB control number: 7100–0200
Frequency: Event–generated
Reporters: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and Edge and agreement corporations.
Annual reporting hours: 63,047 hours
Estimated average hours per response: Initial terms disclosure, 1.5 minutes; change in terms disclosure, 1 minute; periodic disclosure, 7 hours; and error resolution rules, 30 minutes.
Number of respondents: 1,289
General description of report: This information collection is mandatory (15 U.S.C. 1693 et seq.). The disclosures required by the rule and information about error allegations and their resolution are confidential between the institution and the consumer. Since the Federal Reserve does not collect any information, no issue of confidentiality arises. However, the information, if made available to the Federal Reserve, may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. § 552 (b)(4), (6), and (8)).
Abstract: The Electronic Funds Transfer Act and Regulation E are designed to ensure adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer (EFT) services provided to consumers. Institutions offering EFT services must disclose to consumers certain information, including: initial and updated EFT terms, transaction information, periodic statements of activity, the consumer's potential liability for unauthorized transfers, and error resolution rights and procedures. EFT services include automated teller machines, telephone bill payment, point–of–sale transfers in retail stores, fund transfers initiated through the internet, and preauthorized transfers to or from a consumer's account.

Board of Governors of the Federal Reserve System, November 28, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6060 Filed 11–1–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company

Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 28, 2005.

A. Federal Reserve Bank of Cleveland (Cindy West, Manager) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Huntington Bancshares Incorporated, Columbus, Ohio; to merge with Unizan Financial Corp., and thereby indirectly acquire voting shares of Unizan Bank, N.A., both of Canton, Ohio.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Capitol Bancorp Ltd., Lansing, Michigan; to acquire 51 percent of the voting shares of Capitol Development Bancorp Limited III, Lansing, Michigan. and thereby indirectly acquire Bank of Santa Barbara, Santa Barbara, California (in organization).

In connection with this application, Capitol Development Bancorp Limited III, Lansing, Michigan, also has applied to become a bank holding company by acquiring 51 percent of the voting shares of Bank of Santa Barbara, Santa Barbara, California.

C. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

German American Bancorp, Jasper, Indiana; to merge with Stone City Bancshares, Inc., Bedford, Indiana, and thereby indirectly acquire voting shares of Stone City Bank of Bedford, Indiana, Bedford, Indiana.

D. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. CCB Corporation, Kansas City, Missouri; to merge with Acquisition Corporation, Leawood, Kansas, and thereby indirectly acquire voting shares of MidAmerican Bank & Trust Company, National Association, Leavenworth, Kansas.

Board of Governors of the Federal Reserve System, October 28, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6059 Filed 11–1–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANS No.	ACQUIRING	ACQUIRED	ENTITIES
TRANSACTIONS GRANTED EARLY TERMINATION—10/03/2005			
20050527	DaVita Inc	Gambro AB	Gambro Healthcare, Inc.
20051592	Harrah's Entertainment, Inc	Ralph Engelstad and Betty Engelstad, Family Trust UTA 3/6/01.	Imperial Palace, LLC.
20051630	Parthenon Investors II, L.P	Medical Consultants, Inc	Medical Consultants, Inc.
20051659	CRH plc	Legg Mason Capital Partners, LP	Jolly Gardener Products, Inc.
20051662	Eye 1 S.a.r.l.	Thales SA	Avimo Europe Limited, Avimo North America Inc., Thales Electro-Optics Pte Limited, Thales Optics Limited.
TRANSACTIONS GRANTED EARLY TERMINATION—10/04/2005			
20051587	Ventiv Health, Inc.	R. Blane Walter	inChord Communications, Inc.
20051610	Medimmune, Inc	Cellective Therapeutics, Inc	Cellective Therapeutics, Inc.
20051627	Koninkliijke Philips Electronics N.V.	LumiLeds Lighting International B.V	LumiLeds Lighting International B.V.
20051668	GTCR Fund VIII, L.P	James Levoy Sorenson	Sorenson Communications, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—10/07/2005			
20051641	Kirk Kerkorian	General Motors Corporation	General Motors Corporation
20051655	J.C. Flowers I, L.P.	Marsh & McLennan Companies, Inc.	Crump Group, Inc.
20051674	Nelnet, Inc	The Education Financing Foundation of California.	Chela Education Financing, Inc.

TRANS No.	ACQUIRING	ACQUIRED	ENTITIES
20051677	Open Solutions Inc	The BISYS Group, Inc	BIS LP Inc.
20051681	Berkshire Hathaway Inc	Walter Scott, Jr	MidAmerican Energy Holdings Company.
20051695	AECOM Technology Corporation.	EDAW, Inc	EDAW, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—10/12/2005			
20051656	American Capital Strategies, Ltd.	Vicki Rainsberger and Family	Value Plastics, Inc., VANM LLP.
20051671	Wexford Partners VI, L.P	Thomas Drilling Company	Thomas Drilling Company.
20051672	TPG Partners IV. L.P	Certegy Inc	Certegy Inc.
20051676	Fidelity National Financial, Inc	Certegy Inc	Certegy Inc.
20051678	Thomas H. Lee Equity Fund V, L.P.	Certegy Inc	Certegy Inc.
20051685	MarkWest Energy Partners, L.P.	Javelina Company	Javelina Company
20051693	Norsk Hydro ASA	Spinnaker Exploration Company	Spinnaker Exploration Company.
TRANSACTIONS GRANTED EARLY TERMINATION—10/13/2005			
20050939	Adobe Systems Incorporated	Macromedia Inc.	Macromedia Inc.
20051664	Schnitzer Steel Industries, Inc.	Regional Recycling LLC	939 Fortress Investments, LLC, Fortress Apartments, LLC, Metal Asset Acquisition, LLC, Regional Recycling LLC.
20051675	Walgreen Co.	William M. Hait	Schraft's A Specialty Pharmacy, LLC.
20051688	General Electric Company	Manulife Financial Corporation	Cathlamet Timber Company, LLC, Rainier Mineral Company, LLC, Rainier Timber Company, LLC.
20051692	Compania de Cemento Argos, S.A.	Piazza Acquisition Corp	Piazza Acquisition Corp.
20051694	Hicks, Muse, Tate & Furst Equity Fund V, L.P.	Aon Corporation	J.H. Blade & Co., Inc., Sherwood Insurance Services, Sherwood Insurance Services of Washington, Inc., The Swett & Crawford Group, Inc.
20051696	Atlas Pipeline Partners, L.P.	OGE Energy Corp	Enogex Arkansas Pipeline Corporation.
20051700	Infinite Energy, Inc	ECONnergy Energy Company, Inc	ECONnergy Energy Company, Inc.
20060003	Nelnet, Inc	Greater Texas Foundation	LoanSTAR Funding Group, Inc., LoanSTAR Systems, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—10/14/2005			
20051683	WF Holdings, Inc	Carlyle Partners III, L.P	The Relizon Company.
20051691	Triad Hospitals, Inc	Clarksville Health System, G.P	Clarksville Health System, G.P.
TRANSACTIONS GRANTED EARLY TERMINATION—10/17/2005			
20051665	HSBC Holdings plc	Marathon Fund Limited Partnership III	Claire-Sprayway, Inc.
20051679	Israel Corporation Limited	Solutia Inc	Astaris LLC.
20051680	Israel Corporation Limited	FMC Corporation	Astaris LLC.
20060001	Merrill Lynch & Co., Inc	AXA S.A	The Advest Group, Inc.
20060006	The Garfield Weston Charitable Foundation.	Protient, Inc	Protient, Inc.
20060007	Cougar Holdings, Inc	CCC Information Services Group Inc	CCC Information Services Group Inc.
20060031	Value Act Capital Master Fund L.P.	Per-Se Technologies, Inc	Per-Se Technologies, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—10/18/2005			
20050900	Cal Dive International Inc	Stolt Offshore S.A	Stolt Offshore S.A.
20060015	Olympus Growth Fund IV, L.P	Bain Capital Fund IV, L.P	Professional Service Industries Holdings, Inc.
20060016	Johnson Electric Holdings Limited.	SAIA-Burgess Electronics Holding AG	SAIA-Burgess Electronics Holding AG.
20060017	Hewlett-Packard Company	ApplQ, Inc	ApplQ, Inc.
20060025	Lindsay Goldberg & Bessemer L.P.	GTCR Fund VII, L.P	ARG Holdings, Inc.
20060040	Bruckmann, Rosser, Sherrill & Co. II, L.P.	Brinker International, Inc	Brinker Corner Bakery II, LLC, Brinker Corner Bakery I, LLC, Brinker Corner Bakery, L.P., Maggiano's/Corner Bakery Holding, Maggiano's/Corner Bakery, L.P.
TRANSACTIONS GRANTED EARLY TERMINATION—10/19/2005			
20051661	TCV V, L.P	Penson Worldwide, Inc	Penson Worldwide, Inc.

TRANS No.	ACQUIRING	ACQUIRED	ENTITIES
TRANSACTIONS GRANTED EARLY TERMINATION—10/20/2005			
20051371	Cooper Cameron Corporation	DEG Acquisitions, LLC	Dresser, Inc.
20051634	KCP Income Fund	Satish Shah	APG, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—10/21/2005			
20051007	First Data Corporation	Great Hill Equity Partners II, L.P	GMT Group, Inc.
20060002	Chicken Acquisition Corp	American Securities Partners II, L.P	EPL Holdings, Inc.
20060033	Wind Point Partners V, L.P	Kestrel Acquisition Corp	Kestrel Acquisition Corp.
20060036	NEWStar Waste Holdings Corp.	B III Capital Partners, L.P	North East Waste Services, Inc.
20060038	Arend Oetker	Madison Dearborn Capital Partners, L.P	Milnot Holding Corporation.
20060041	Perry Partners, L.P	Sears Holdings Corporation	Sears Holdings Corporation.
20060042	Perry Partners International, Inc.	Sears Holdings Corporation	Sears Holdings Corporation.
20060045	E*TRADE Financial Corporation.	JPMorgan Chase & Co	J.P. Morgan Invest, LLC.
20060047	Blackstone ECC Communications Partners L.P.	Jeffrey H. Smulyan	Emmis Television Broadcasting L.P., Emmis Television License, LLC, SJL of Kansas Corp.
20060050	Fenway Partners Capital Fund II, L.P.	SK Equity Fund, L.P	Targus Group International, Inc.
20060051	Bruckmann, Rosser, Sherrill & Co. II, L.P.	SAFE Boats Delaware LLC	SAFE Boats Delaware LLC.
20060053	Check Point Software Technologies Ltd.	Sourcefire, Inc	Sourcefire, Inc.

For Further Information Contact: Sandra M. Peay, Contact Representative; or Renee Hallman, Contact Representative.

Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580. (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–21812 Filed 11–1–05; 8:45 am]

BILLING CODE 6750–01–M

OFFICE OF GOVERNMENT ETHICS

Proposed Collection; Comment Request for Modified OGE Form 201 Ethics Act Access Form

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: After this first round notice and public comment period, OGE plans to submit a modified OGE Form 201 to the Office of Management and Budget (OMB) for review and three-year approval under the Paperwork Reduction Act. The OGE Form 201 is used by persons for requesting access to executive branch public financial disclosure reports and other covered records. OGE is proposing three modifications to the form: Clarifying the prohibited uses statement; updating the Privacy Act Statement summary and the edition date. The modified form will replace the existing one.

DATES: Comments by the agencies and the public on this proposal are invited and should be received by January 17, 2005.

ADDRESSES: You may submit comments to OGE by any of the following methods:

- E-Mail: *usoge@oge.gov.* For E-mail messages, the subject line should include the following reference: ''OGE Form 201 Paperwork Comment.''
- Fax: 202–482–9237.
- Mail, Hand Delivery or Courier: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Mary T. Donovan.

FOR FURTHER INFORMATION CONTACT: Mary T. Donovan, Office of Government Ethics; telephone: 202–482–9232; TDD: 202–482–9293; FAX: 202–482–9237. A copy of the proposed modified OGE Form 201 may be obtained, without charge, by contacting Ms. Donovan.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is the supervising ethics office for the executive branch of the Federal Government under section 109(18)(D) of the Ethics in Government Act (the Ethics Act), 5 U.S.C. appendix 109(18)(D). OGE is planning to submit, after this notice and comment period (with any modifications that may appear warranted), a proposed modified OGE Form 201 ''Request to Inspect or Receive Copies of SF 278 Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Records' for review and three-year approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Once finally approved by OMB and adopted by OGE, the modified version of this OGE form will replace the existing version.

The OGE Form 201 (OMB control No. 3209–0002), collects information from, and provides certain information to, persons who seek access to SF 278 reports and other covered records. The form reflects the requirements of the Ethics Act and OGE's implementing regulations that must be met by a person before access can be granted. These requirements relate to information about the identity of the requester, as well as any other person on whose behalf a record is sought, and a notification of prohibited uses of SF 278 reports. See section 105(b) and (c) of the Ethics Act, 5 U.S.C. appendix, section 105(b) and (c), and 5 CFR 2634.603(c) and (f) of OGE's executive branchwide regulations thereunder.

Executive branch departments and agencies are encouraged to utilize the OGE Form 201, but they can, if they so choose, continue to use or develop their own forms as long as they contain all the required information.

Proposed Modifications

First, OGE proposes rewording the prohibited uses statement on the form in order to clarify that the submitter's signature denotes awareness of the prohibited uses of covered records. In addition, OGE proposes moving the

statement on the form so that it precedes the signature and date block.

Second, OGE proposes modifying the Privacy Act Statement summary of the OGE Form 201. In 2003, OGE updated the OGE/GOVT–1 system of records notice (covering Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records, and in which completed OGE Form 201s are maintained). See 68 FR 3097–3109, at 3100 (January 22, 2003). As a result, OGE is modifying the sixth routine use listed in the Privacy Act Statement summary in part II of the form. Finally, OGE proposes updating the edition date on pages one and two of the form.

Reporting Burden

OGE estimates that an average of 374 OGE Form 201s will be filed throughout the executive branch each year by members of the public (primarily by news media, public interest groups and private citizens) for the next three years. This figure is based on the number of OGE Form 201s filed at OGE by members of the public (221 for 2003 and 143 for 2004) and responses to OGE's annual agency ethics program questionnaire (244 for 2003 and 140 for 2004) for a total of 748. That number is then divided by two to give the projected annual average of 374.

The estimated average amount of time to complete the form, including review of the instructions, remains at ten minutes. Thus, the estimated annual public burden for the OGE Form 201 (throughout the executive branch) is 63 hours (374 form × 10 minutes per form − number rounded up). This is an increase from the current burden of 37 hours. The current burden accounts for filers whose OGE Form 201s were filed each year only with OGE. The proposed estimate of burden hours includes OGE Form 201s or equivalent access forms filed by the public with departments and agencies throughout the executive branch (including OGE).

Web Site Distribution of Blank Forms

The OGE Form 201 as modified will continue to be made available free-of-charge as a downloadable and fillable Portable Document Format (PDF) file to the public as well as departments and agencies on OGE's Internet Web site at *http://www.usoge.gov.*

OGE will continue to permit departments and agencies to use the copy of the OGE Form 201 available on OGE's Web site or to develop and utilize their own, electronic versions of the OGE form, provided that they precisely duplicate the original to the extent possible. Agencies can also develop their own access forms, provided all the information required by the Ethics Act and OGE regulations is placed on such forms, along with the appropriate Privacy Act and paperwork notices with any attendant clearances being obtained by the agencies therefor.

For now, OGE itself accepts filing of a completed OGE Form 201 by mail, fax, or in person, but does not permit E-mail or Internet online transmission. Similarly, requested copies of reports or other covered records are supplied by OGE as hard (paper) copies.

Consideration of Comments

Public comment is invited on each aspect of the proposed modified OGE Form 201 as set forth in this notice, including specifically views on the need for and practical utility of this information collection; the accuracy of OGE's burden estimate; the enhancement of quality, utility and clarity of the information collected; and the minimization of burden (including the use of information technology).

Comments received in response to this notice will be summarized for, and may be included with, the OGE request for OMB paperwork approval for this proposed modified information collection. The comments will also become a matter of public record.

Approved: October 27, 2005.

Marilyn L. Glynn,

General Counsel, Office of Government Ethics.

[FR Doc. 05–21834 Filed 11–1–05; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting:

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Populations—Working Group on Quality.

Time and Date: 8:30 a.m.–5 p.m., November 18, 2005.

Place: Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 705A, Washington, DC 20201.

Status: Open.

Purpose: At this meeting the Working Group on Quality will study the expected impact of the electronic health record on health measurement and quality, hearing views from patients, the public health community, and other stakeholders.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Anna Poker, Lead Staff Person for the NCVHS Subcommittee on Special Populations, Working Group on Quality, Agency for Healthcare Research and Quality, Center for Quality Improvement and Patient Safety, 540 Gaither Road, Room #3331, Rockville, MD 20850, Phone: 301–427–1802; or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://aspe.os.dhhs.gov/ncvhs,* where an agenda for the meeting will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: October 20, 2005.

James Scanlon,

Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 05–21806 Filed 11–1–05; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: ''Security Checkpoints and Patients With Radiopharmaceuticals.'' In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by January 3, 2006.

ADDRESSES: Written comments should be submitted to: Cynthia D. McMichael, Reports Clearance Officer, AHRQ, 540 Gaither Road, Suite 5022, Rockville, MD

20850. Copies of the proposed collection plan, data collection instrument, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ, Reports Clearance Officer, (301) 427–1651.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Security Checkpoints and Patients With Radiopharmaceuticals''

Patients receiving radioactive therapeutic or diagnostic compounds (called ''radiopharmaceuticals'') can emit radiation at the time when they are released from a hospital facility and present danger to their families and the public. In addition, these individuals might activate radiation detectors at airports, stadiums, and other public places, and will be stopped for questioning by law enforcement personnel. It is very important that hospitals provide patients with educational materials that explain the unique problems patients may face as a result of receiving this treatment, as well as provide guidance about how to respond to situations where law enforcement questions and other concerns may arise.

The goal of the study is to determine what procedures are followed by hospitals when releasing patients treated with radioactive compounds.

The study will involve interviewing 60 health care providers who are directly involved in the release of patients treated with radioactive compounds.

Specifically, the interview protocol will be centered on the following topics:

(1) How health care providers determine when patients receiving radiopharmaceuticals can be released from care.

(2) What type of information is provided to patients to ensure safety to their families and the public.

(3) How this information is communicated to patients.

(4) What information is (or can be) provided to patients who may activate radiation detectors at security checkpoints so that their processing is facilitated should questions regarding their medical procedures arise.

Best practices identified through the analyses of interview data could lead to the development of standardized procedures to: (a) reduce secondary exposure to radiation by members of the patient's family and by the public; and (b) ensure that patients who activate radiation detectors at security checkpoints understand why they emit radiation and carry the appropriate documentation to validate their statements. The study findings will be disseminated to the health care community through a scholarly publication journal article (title is to be determined).

Data Confidentiality Provisions

Data collected by the contractor and the contractor's draft analyses will be retained for one year after final acceptance of all contract deliverables, unless, longer retention is requested by the agency for audit purposes.

All agency documents pertaining to the contract will be archived after the contract is completed and retained in accordance with a Federal Records Act of 1950 retention schedule.

Methods of Collection

The date will be collected using a telephone survey. The contractor will contact each health care provider through appropriate management offices explaining this survey and ask to be directed to the appropriate, knowledgeable staff in their facility. The interviews will be conducted by telephone. If requested, the contractor will provide a copy of the interview questions in advance so that the hospital staff has time to obtain pertinent information. The contractor will also request copies of educational materials provided to patients, any specific tools used to calculate radiation dose to members of the public as well as other pertinent material. The contractor will obtain and evaluate the referenced educational materials qualitatively, describing the content and detail of such materials and reviewing them for clarity. In addition, the contractor will analyze the responses to the interview questions quantitatively and qualitatively as appropriate.

To recruit the appropriate interviewees, we will first contact the Chief of Medicine's office and ask the staff to refer us to the Head of the Department of Radiology/Radiation Oncology/Nuclear Medicine. (Based on our experience surveying health care providers, for smaller hospitals it is sometimes more effective to start with the Hospital Administrator's office.) We will introduce ourselves, explain the goals of the study, and volunteer to provide a cover letter describing the study and any letters of endorsement. We will then contact the Department Heads and request that they refer us to the appropriate, knowledgeable staff in their departments.

ESTIMATED ANNUAL RESPONDENT BURDEN

Type of survey	Number of respondents	Estimated time per respondent in minutes	Estimated total burden hours	Estimated annual cost to the respondents
Telephone Interviews	60	45	45	$4500
Total	60	45	45	4500

Request for Comments

In accordance with the above cited legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: October 25, 2005.

Carolyn M. Clancy,

Director.

[FR Doc. 05–21866 Filed 11–1–05; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

2005 White House Conference on Aging

AGENCY: Administration on Aging, HHS.

ACTION: Notice of conference call.

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C. Appendix 2), notice is hereby given that the Policy Committee of the 2005 White House Conference on Aging will vote on the Annotated Agenda for the WHCoA and may discuss other items related to finalizing the 2005 WHCoA during a conference call. The conference call will be open to the public to listen, with call-ins limited to the number of telephone lines available. Individuals who plan to call in and need special assistance, such as TTY, should inform the contact person listed below in advance of the conference call. This Notice is being published less than 15 days prior to the conference call due to scheduling problems.

DATES: The conference call will be held on Thursday, November 3, 2005, at 5 p.m., eastern standard time.

ADDRESSES: The conference call may be accessed by dialing, U.S. toll-free, 1–800–857–0419, passcode: 6045175, on the date and time indicated above.

FOR FURTHER INFORMATION CONTACT: Kim Butcher, (301) 443–2887, or e-mail at *Kim.Butcher@whcoa.gov.* Registration is not required. Call in is on a first come, first-served basis.

SUPPLEMENTARY INFORMATION: Pursuant to the Older Americans Act Amendments of 2000 (Pub. L. 106–501, November 2000), the Policy Committee will hold a meeting by conference call to vote on the Annotated Agenda for the 2005 White House Conference on Aging. The public is invited to listen by dialing the telephone number and using the passcode listed above under the Address section.

Dated: October 28, 2005.

Edwin L. Walker,

Deputy Assistant Secretary for Policy and Programs.

[FR Doc. 05–21823 Filed 11–1–05; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0502]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Study to Measure the Compliance of Prescribers With the Contraindication of the Use of Triptans in Migraine Headache Patients With Vascular Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 2, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Study to Measure the Compliance of Prescribers With the Contraindication of the Use of Triptans in Migraine Headache Patients With Vascular Disease

Migraine headache affects about 20 million Americans. Over the last decade, numerous drugs in a category referred to as ''triptans'' have been shown to be efficacious in treating migraine headache and have been approved for this condition. Triptan drugs have been prescribed to millions of patients. However, triptans are routinely contraindicated in patients with vascular diseases due to associated rare occurrence of myocardial infarction, stroke, and other ischemic events. In view of the wide use of this class of drugs and the potential impact on public health as a result of this contraindication, FDA believes it would be significantly helpful to better understand the prescribing practices for these drugs.

FDA plans to examine the feasibility of using the Internet to recruit triptan-user migraine headache patients to determine whether prescribers follow the labeling recommendation by not prescribing this class of drugs to patients with pre-existing cardiovascular, cerebrovascular, or peripheral vascular syndromes or with cardiac risk factors.

FDA intends to solicit patients over the Internet to identify a group of triptan users. FDA will then ask these patients to complete a questionnaire about their medical history with a focus on vascular diseases. Following that, FDA will request medical records from a sample of the patients and review the submitted records to verify the medical history and the presence, if any, of cardiovascular, cerebrovascular, or peripheral vascular ischemic diseases. FDA will also collect information about patients' demographics, route of administration (oral, injection, intranasal), and duration of exposure to triptans.

In the **Federal Register** of November 17, 2003 (68 FR 64902), FDA published a notice requesting comment on this information collection. Three comments were received in response to the notice, each raising several issues, as follows:

(1) One comment contended that the agency has not put forth an adequate foundation for conducting the study. The comment said that no data or other information has been described to justify the expenditure of government resources and the imposition of information collection burdens on the industry. The comment said that the only rationale consists of speculation that ''it would be of great use to better understand the prescribing practices as a result of this contraindication [use of triptans in patients with vascular diseases].'' The comment contended that this is an insufficient predicate for conducting publicly-funded research that casts a cloud of suspicion over a class of currently marketed drug products that provide great clinical benefit to patients who suffer from migraine headaches. The comment said that the **Federal Register** notice provides no information about FDA's view of the relative role of data derived from the survey in relation to data from controlled clinical studies, epidemiology studies, and spontaneous medical event reports.

The comment also stated that although many marketed drugs carry contraindications and/or serious warnings, FDA has not explained how or why the triptan class of drugs was targeted for special attention. The comment said that the cumulative risk of population exposure to certain older drugs for migraine is substantially greater than the risk of exposure to the triptan class of medicines which are the newest drugs in the inventory of migraine drugs and collectively make up only about 40 percent of the market volume for acute migraine treatments. The comment said that one consequence of the sole focus on triptan drugs could be to shift patient use to the older drugs that could be assumed to be relatively free of safety risks. The comment said that FDA implies a current problem with triptans and prejudges the outcome of the study when it says in the **Federal Register** notice ''* * * further action on the sponsor's part to improve risk management * * * [to] include further study of the problem, a labeling change, educational programs performed by the sponsor, or increased restrictions on prescribing.'' The comment said that FDA has already worked with sponsors to assure that the potential risks of use of all of these drugs are well characterized and accurately described in labeling. The comment said that to its knowledge, there are no new signals from the triptan-class of drugs.

Response: The proposed Internet-based study is a way to explore new methods to assess appropriate prescribing of drugs. Currently used methods, such as surveys of population subsets such as HMOs (Health Maintenance Organizations), are costly and difficult. The Internet may offer a convenient and efficient approach to examine prescribing practices for drugs. The proposed study is a pilot methodology study, and a first step in determining the feasibility of this approach and in determining whether FDA can detect any instances of prescribing of triptans in patients with contraindications. If Internet-based studies are in fact feasible, then FDA will design further investigations to determine their validity. The feasibility endpoints of the proposed study are demographic characteristics of respondents, case confirmation rates, and ability to document participant assertions in their medical records. Because it is a feasibility study, FDA will not make inferences from the results regarding the appropriateness of prescribing habits. The cost of this study is relatively small. Furthermore, there is no burden to industry since members of the public and physicians' offices will be the participants.

Triptan-use is common, as is the prevalence of ischemic heart disease. A recent review of these factors in adverse event reports by FDA's Office of Drug Safety showed that the great proportion of myocardial infarctions reported in association with triptans occurred in patients who had pre-existing contraindicated conditions. These factors make this class of drugs convenient for a feasibility test of our proposed Internet-based approach.

(2) The comment also said that the proposed method of investigation is not valid and is inferior to well-accepted methodological alternatives for conducting exploratory analyses of this kind. The comment noted FDA's statement that ''* * * a signal of substantial prescribing to patients with vascular contraindications in this selected population may warrant further action on the sponsor's part to improve risk management.'' The comment contended that FDA provides neither specific details regarding how it intends to implement the study nor what it will judge to be a signal that will require action on the part of sponsors. The comment said that the absence of any definition of a signal and a sampling basis are critical flaws in the study. Another comment said FDA should deduce what proportion of patients with pre-existing cardiovascular, cerebrovascular, or peripheral vascular disease would constitute a ''signal'' in the study protocol, and specify what level of ''improvement of risk management'' (for example, further study of the problem, a labeling change, educational programs, increased restrictions on prescribing) will be required in response to the observed signal. This predetermined signal should also be the basis for the sample size calculation.

Response: This is a pilot study with an objective of evaluating the feasibility of the Internet-based approach and determining whether FDA can detect any instances of prescribing of triptans in patients with contraindications. The sample size for the study was selected based on a consideration of practicality and cost. The practical objectives of the study include, but are not limited to, determining whether enough patients can be recruited in a reasonable amount of time, whether patient questionnaires will be filled out completely, and whether FDA can document participant assertions in their medical records. FDA notes that, as with all study designs, the Internet-based approach is subject to some methodological weaknesses, but FDA intends to explore whether the use of the Internet can be an efficient means of conducting this type of study. Despite these limitations, FDA believes this approach has greater internal validity than a system of spontaneous reporting because of the inherent underreporting and potential bias involved with the latter method. If the findings of the pilot study suggest the need for further study in a larger setting, such as a managed care database, FDA anticipates that the results would be used to help plan for such future studies. FDA does not anticipate taking regulatory action based on the conclusions of the proposed study, nor will we extrapolate the frequency of apparent mis-prescribing to the general patient population. Therefore, it would be premature to define at this stage what would constitute an appropriate signal. If the survey indicates prescribing problems with triptans in migraine headache patients with vascular disease, then FDA can define what would constitute such a signal for future studies.

(3) Another comment said it is unclear how patients will be invited to take part in the survey. An open invitation would result in a significantly biased sample, particularly if the goal of the survey is being mentioned, and this bias would not be resolved by the subsequent checking of medical records. The comment said that other sources of error inherent in the study include coverage, nonresponse, and measurement and sampling error. Measurement error is introduced due to the survey medium or due to poorly written questions/scales. Sampling error is the error associated with taking a sample of respondents and not a census, and it is impractical to conduct a random sample among online respondents. The comment said a small, voluntary survey will provide results that essentially represent testimonial evidence that can only support the hypothesis being evaluated.

Response: FDA plans to use search engine web-pages as the primary recruitment platform for all cases. Participants will only be eligible for the study if they have been prescribed triptans or ergot alkaloids, and they will not be recruited into the study based on contraindicated comorbidities. Therefore, self selection bias (in relation to ischemic heart disease) is not likely. Participants will be recruited into the study by an advertisement linked to the keywords for migraine (for example, migraine, chronic headache, and so forth) and not for vascular disorders. Therefore, anyone searching for information on migraine headache can apply to participate in the study.

FDA agrees that the study is not constructed as a population-based survey, nor could its results be used to compute rates in the general population. However, the demonstration of its feasibility, together with a description of the characteristics of participants, will provide insights into its likely utility. For example, it could form the basis for comparative studies or other innovative methodologies for determining characteristics of patients being prescribed pharmaceuticals.

There is support for the value of online random surveys. By August 2003, surveys on Internet usage by the Bureau of International Information Programs, U.S. Department of State, indicated that the U.S. online population had reached approximately 126 million (Ref. 1). These data suggest that over two-thirds of adults in the United States now regularly access the Internet. The Internet is rapidly becoming part of the population's daily activities. Information gathered by the Pew Internet & American Life Project through telephone interviews in 2004 shows that ''the vast majority of Americans say the Internet plays a role in their daily routines and that the rhythm of their everyday lives would be affected if they could no longer go online.'' Nielson NetRatings has performed monthly surveys of Internet users to compile demographic reports. Their results are based on individuals responding to solicitations and are likely to be applicable to individuals responding to advertisements to participate in Internet-based studies. In their February 2004 survey, the modal age range was 35 to 49 years, representing 33 percent of Web users. Seventeen percent were aged >55 years, representing about 21 million individuals. Overall, 47 percent of users were women, a significant rise from 1998.

Programs of Internet-based epidemiologic and clinical studies are already well underway among a number of research groups. One of the first was the Epidemiologic Cyberspace Cohort Study (Refs. 2 and 3). This study solicited participation over the Internet and used electronic registration as a surrogate for a signed consent. Data were collected by questionnaire modules and were encrypted during submission. Lenert and colleagues tested the feasibility and validity of online quality-of-life studies among individuals with ulcerative colitis (Refs. 4 and 5). The same team also explored the feasibility of longitudinal outcomes studies of Internet users who have ulcerative colitis (Refs. 4 and 5). The Internet has also been used to administer interventions such as smoking cessation programs and the Arthritis Self-Management course (Refs. 6 and 7). It has been explored as a way to research migraine headaches (Refs. 8 and 9), and to measure self-reported disease activity in rheumatoid arthritis (Ref. 10). A methodologically successful Internet-based clinical trial of glucosamine was conducted and its results are described in publications in the *British Medical Journal* and the *American Journal of Medicine* (Refs. 11 and 12).

(4) A comment said that an Internet-based, patient directed survey would be inherently biased and would provide inaccurate information. The comment explained that spontaneously obtained adverse event data is sensitive to many external factors, and that reports solicited via an Internet survey will share some of the same shortcomings of selection/reporting bias as spontaneous reports. The comment said that because the premise for the study has now been publicly described, a balanced response is questionable and FDA will be unable to quantitatively correlate the number of cases identified with the actual rate of occurrence of inappropriate prescribing among users of triptans. The comment also contended that Internet-based studies have significant potential to attract patients that disproportionately fit the profile of interest and are not representative of the population of triptan users at large, and would provide biased information regarding the true rate or strength of the signal. The comment said it would be more productive to explore the possibility of inappropriate prescribing by using drug utilization databases and complementary epidemiological research. The comment noted that FDA acknowledged that the study population obtained through the study would most likely not reflect the population of users of triptan drugs at large, and asked how this statement is reconciled with the goal of estimating the rate of inappropriate prescribing.

Another comment suggested an alternative strategy for the survey. The comment said that information bias or recall bias (for example, concomitant medications and medical history) can be avoided by using medical claims and pharmacy databases. By utilizing a large managed care database, the comment said it would be possible to identify triptan users through pharmacy data, and then to determine the rate of vascular disease and risk factors by reviewing the linked medical records.

Response: FDA agrees that the study population obtained through Internet-based recruitment may not reflect the general population of triptan users. Therefore, FDA is placing the following restriction on the definition of the source population: Individuals who use search engines with which the study Web site is registered. As reported in other studies, it is likely that this sample will resemble Internet users in general because the sample is drawn from among such users. Furthermore, it might allow the agency to define a source population that would represent an epidemiologically valid sampling frame for future studies. FDA does not intend to generalize to the general patient population the findings of this pilot study regarding the use of triptans in patients with contraindications. That is, FDA will not quantitatively correlate the number of cases identified with the actual rate of occurrence of inappropriate prescribing among users of triptans. Rather, this pilot study represents a first attempt to examine the feasibility of this approach and to determine whether FDA can detect any instances of prescribing of triptans in patients with contraindications. The goal of testing the Internet as a study platform is to avoid the prohibitive burden and expense of other types of studies. If the findings of the pilot study suggest the need for further study in a larger setting, such as a managed care database, FDA anticipates that the results would be used to help plan for such future studies.

(5) Several comments said that information obtained from the proposed Internet-based study will have limited validity for a number of reasons, and that there are several potential shortcomings with an Internet-based survey that may result in selection and/or information bias and may make it difficult to draw the following valid and meaningful conclusions:

(a) The target audience will not accurately reflect the population of triptan users because comparisons of telephone/mail surveys and Internet-based surveys indicate there are significant differences in response propensity by several demographic, health, and treatment characteristics, including education, sex, age, race, socioeconomic status, computer literacy/access to the Internet, and patient satisfaction/dissatisfaction with their physician/treatment.

Response: FDA agrees that the study population obtained through Internet-based recruitment may not entirely reflect the general population of triptan users. However, this approach might allow FDA to define a source population that would represent an epidemiologically valid sampling frame for future studies. As explained above,

FDA does not intend to generalize the findings of this pilot study regarding the use of triptans in patients with contraindications to the general patient population. Also, this sample will likely resemble that of Internet users in general. It is of note that Internet use in the population has risen progressively during the last few years and continues to increase (Ref. 1). Current estimates indicate that 128 million Americans use the Internet regularly. Furthermore, recent Internet-based studies do not show major biases. For example, the Online Glucosamine Trial recruited a sample that was similar to those observed in traditional trials and included many women, elderly individuals, and individuals with low incomes (Ref. 12). An online lupus case-control study was also able to recruit a control group that resembled Internet-users as a whole, including a similar proportion of African American participants (Ref. 13). Thus, the pilot study represents a first attempt to examine the feasibility of this Internet-based approach and determine whether FDA can detect any instances of prescribing of triptans in patients with contraindications.

(b) The study will involve selection bias because the respondents will be self-selected, have little incentive to complete an Internet questionnaire, and are therefore more likely to have suffered adverse events from the use of triptans. In the absence of a true denominator, the comment said it would not be possible to calculate with accuracy the prevalence of vascular disorders which contraindicate the use of triptans. The comments stated that respondents to an Internet survey are unlikely to be representative of triptan users on the very characteristic that is being studied. Respondents may be more likely to have adverse events with triptans and medical histories that are positive for pre-existing cardiovascular, cerebrovascular, or peripheral vascular disease. Thus, the comment concluded that the prevalence of pre-existing vascular disease among triptan users may be dramatically overestimated.

Response: Participants will only be eligible for the study if they have been prescribed triptans or ergot alkaloids, and they will not be recruited into the study based on contraindicated comorbidities. Participants will be recruited into the study by an advertisement linked to the keywords for migraine (for example, migraine, chronic headache, and so forth) and not for vascular disorders. Therefore, anyone searching for information on migraine headache can apply to participate in the study and selection bias is not likely. The information that the FDA is collecting is related to patients experiencing a contraindication before exposure to triptans and not adverse events from the use of triptans.

(c) The study may select against a large group of migraine sufferers because migraine is a disorder more common in individuals with low education and low socioeconomic status (SES), and Internet users have a higher SES. This design would permit a demonstration that some migraine sufferers receive triptans despite cardiovascular-relative contraindications, but will not permit an estimate of the prevalence or incidence of inappropriate prescribing.

Response: FDA agrees that participants might have a higher SES. However, this factor is expected to influence the generalizability of the study results but not the internal validity of the work. In addition, this factor might bias the results towards the null and would not likely flag a problem that does not exist. As mentioned earlier, FDA does not intend to generalize the study findings to all migraine patients or estimate a prevalence or incidence of inappropriate prescribing.

(d) The lack of accuracy of patient self-reporting of medical diagnoses and the timing of adverse events could also lead to significant information and recall bias. In addition, the significance of a reported adverse vascular outcome in a respondent who has used a triptan in the past may be unclear. With a lack of veracity in assuring the accuracy of the medical information reported, it will be difficult and inadvisable to draw meaningful conclusions from the study. The dynamic environment, process of informed consent, and clinical decisionmaking which takes place in the context of a private patient-physician encounter, cannot be reliably reproduced even with accurate completion of the questionnaire and ascertainment of the medical record.

Response: Participants in the proposed study will be thoroughly authenticated through the process of obtaining informed consent, approved by both FDA and the data contractor's institutional review board, and by reviewing copies of their medical records. Consent forms will authorize the FDA investigator and data contractor to obtain further information about the patient's disorder by means of a checklist sent to their physician and copies of their medical records. The consent form will ask the patients for permission to write to their physician and/or hospital to request documentation of their migraine or other medical disorders. It will ask respondents to confirm their identity and will emphasize the legal nature of the document.

(6) Several comments suggested certain areas for inclusion in the final protocol for the proposed study and said that the proposed study must be explicit and address the following points:

(a) A strategy for identifying a representative sample of migraine sufferers treated with triptans and a method by which this population is contacted and the description of the rationale and purpose of the study used to convince patients to complete the questionnaire (the method must be free of bias and coercion); another comment asked for a description of the means by which patients will be obtained for participation (e.g., mail, e-mail, Web sites, doctor offices, pharmacies, and so forth);

Response: FDA will use search engine Web pages as the primary recruitment platform for all cases. FDA will place advertisements on the search engine sites, and will register the study site with each of the search engines, using a set of key terms (for example, migraine, chronic headache, and so forth).

(b) The rationale and power calculations used to define the 500 participants;

Response: FDA selected the sample size based on a consideration of practicality and cost. This is a pilot study with an objective of evaluating the feasibility of the Internet-based approach and determining whether FDA can detect any instances of prescribing of triptans in patients with contraindications. Practical objectives include, but are not limited to, determining whether enough patients can be recruited in a reasonable amount of time, whether patient questionnaires will be filled out completely, and whether FDA can document participant assertions in their medical records. If the findings of the pilot study suggest the need for further study in a larger setting, such as a managed care database, FDA anticipates that the results will be used to help plan for such future studies. FDA will not extrapolate the frequency of apparent misprescribing to the general patient population.

(c) Any proposed incentive for patients to participate in the study.

Response: There are no incentives offered for patients to participate in the pilot study.

(7) Another comment raised the following additional issues about the proposed Internet-based survey:

(a) There is no specific question about whether a patient has ever been prescribed a triptan for treatment of his/her migraine headaches;

Response: The question about migraine medications states: ''Please check the box for each medication that has ever been prescribed to you for migraine treatment.'' Therefore, the information suggested by the comment will be captured.

(b) Because some triptans have a variety of formulations and others do not, only the appropriate route(s) of administration for each triptan should be listed in the questionnaire to avoid invalid data;

Response: Information on the exact formulation of triptans will be collected.

(c) The questions regarding triptan prescribing and medical history are not constructed in a way that the compliance of prescribers can be evaluated appropriately, resulting in a false-positive response;

Response: The questions about triptan prescribing request information about the dates of the prescription and how often it is used. In addition, the medical history questions also ask about the timing of the medical conditions. Therefore, such information will be sufficient to assess compliance of prescribers and concurrent use of other medications.

(d) It is not clear whether FDA will use the data collected in the ''Medications'' section to evaluate concurrent or contemporaneous medication use among triptan users—this information would not be sufficient to assess whether other medications are taken concurrently or contemporaneously with triptans.

Response: Data will be collected on other medications taken by patients. However, evaluating concurrent medication use among triptan users is not one of the primary goals of the study.

(e) Because of the unrestricted access to the survey, there is the potential for fraudulent entry of information.

Response: As mentioned earlier, participants in the proposed study will be thoroughly authenticated through the process of obtaining informed consent and reviewing copies of their medical records.

(f) Relevant and complete medical records of all respondents must be reviewed. In addition, the method by which additional medical information will be acquired for incomplete cases must be addressed, or the criteria for discarding a case when the necessary medical data is incomplete must be explicit.

Response: As mentioned earlier, the consent forms that patients will sign will authorize the FDA investigator and data contractor to obtain further information about the patient's disorder by means of a checklist sent to their physician and copies of their medical records. If these records do not verify what the patient reported, the case will be discarded.

(8) Two of the comments discussed the Health Insurance Portability and Accountability Act (HIPPA) and its regulations and how it may affect the proposed study.

The comments requested that the study protocol address how the completion of an Internet-based questionnaire and the review and sampling of patient records would comply with the HIPPA regulations regarding medical privacy. A comment said that the method by which medical records and questionnaires will be de-identified may conflict with HIPPA regulations. The comment also asked for a description of the method and the appropriateness of obtaining a waiver from the new HIPPA regulations. Another comment said that the proposed study needs to address the method of review of medical records: For example, the proportion of patients' medical records that will be reviewed, the means to obtain informed consent, strategies to be used to address constraints on record access due to HIPAA regulations, responsibility for medical chart review, medical record abstracting forms, and other ways of verifying medical history when medical records are not available or incomplete. Another comment said that the accuracy of self-reported vascular disease on the Internet is uncertain and that this limitation might be partially offset by a medical record review in a subset of respondents to confirm the accuracy of self-reporting. However, the comment said, a representative sampling of patient records may be restricted by the HIPAA regulations.

Response: The proposed study, including the Internet-based questionnaire and review and sampling of patient records, does not violate the HIPAA regulations, 45 CFR parts 160 and 164. The signed consent form, in accordance with the HIPAA regulations, authorizes the physician and/or hospital to provide documentation of the patient's migraine or other medical disorders. The signed consent form also authorizes, in accordance with the HIPAA regulations, the study investigators to receive and use this medical record information.

All information that allows direct identification of participants will be omitted from the study databases. These databases will only contain information of a nonsensitive nature. Safeguards will be imposed to prevent tampering or accessing of these data by nonstudy personnel. All hardcopy information, including copies of medical charts, will be stored in a locked filing cabinet in a locked office at the FDA data contractor's site. The data will be used for study purposes only and will not be distributed to other parties without the participant's permission. The identities of all individuals who participate as ''cases'' of triptan users with vascular disease and at least 20 percent of the remainder of patients will be thoroughly authenticated through the process of obtaining informed consent and reviewing copies of their medical records. Consent forms will authorize the investigator to obtain further information about their disorder by means of a checklist sent to their physician and copies of their medical records. The consent form will ask them for permission to write to their physician and/or hospital to request documentation of their migraine or other medical disorders. It will ask respondents to confirm their identity and will emphasize the legal nature of the document.

(9) A comment said that before conducting the study, FDA should consult with sponsors of marketed triptan drugs and other companies with research, development, and commercial marketing experience about optimal study design and assessment. The comment also said that prior to implementing the study, FDA should disclose specific details about the proposed collection (for example, how the purpose of the survey will be explained to patients, a prospective definition of a ''signal,'' and so forth), and offer an opportunity for public comment on these specifics. Another comment described the findings of a panel it convened to evaluate the scientific and clinical data on triptan-associated cardiovascular risk and to formulate consensus recommendations to guide health care providers in making informed prescribing decisions for patients with migraine. The comment also described other studies containing estimates of the rates of various vascular diseases and cardiac risk factors among patients using triptans. The comment contrasted these studies with the proposed FDA Internet-based study and said that the FDA proposed study has a number of methodological limitations that may produce misleading data and may lead to a renewed and unnecessary

sense of alarm among patients and practitioners.

Response: The purpose of the November 17, 2003, **Federal Register** notice was to describe the proposed study and offer an opportunity for comment by the sponsors of marketed triptans. The responses to the comments in this notice also provide additional explanation and another opportunity for all interested parties to participate through additional comments. In addition, FDA has responded in this document to those comments expressing concern with the study methods.

References

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

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FDA estimates that approximately 500 persons will voluntarily complete the questionnaire. The estimated time for completing each questionnaire is approximately 2 hours, resulting in a total burden of 1,000 hours per year. The burden of this collection of information is estimated as follows:

TABLE 1.—ESTIMATED ONE-TIME REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
500	1	500	2	1,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 26, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–21807 Filed 11–1–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Antibodies Against Insulin-Like Growth Factor II and Uses Thereof

Dimiter S. Dimitrov et al. (NCI).

U.S. Provisional Application No. 60/709,226 filed 17 Aug 2005 (HHS Reference No. E–217–2005/0–US–01).

Licensing Contact: Michelle A. Booden; 301/451–7337; *boodenm@mail.nih.gov.*

The type 1 insulin-like growth factor (IGF) receptor (IGF1R) is over-expressed by many tumors and mediates proliferation, motility, and protection from apoptosis. Agents that inhibit IGF1R expression or function can potentially block tumor growth and metastasis. Its major ligand, IGF–II, is over-expressed by multiple tumor types. Previous studies indicate that inhibition of IGF–II binding to its cognizant receptor negatively modulates signal transduction through the IGF pathway and concomitant cell growth.

The present invention relates to the identification of multiple, novel fully human monoclonal antibodies that are specific for IGF–II and do not cross-react with IGF–1 or insulin. The present invention also describes methods employing these novel antibodies to inhibit IGF–1R phosphorylation and

concomitant cell growth and motility. The invention also encompasses other IGF–II antibodies or derivatives of the original antibodies and methods of using said antibodies to block binding of ligands. Additional embodiments describe methods for treating various human diseases associated with aberrant cell growth and motility including breast, prostate, and leukemia carcinomas. Thus, these novel IGF–II antibodies may provide a therapeutic intervention for multiple carcinomas without the negative side effects associated with IGF I and insulin inhibition.

This technology is available for licensing under an exclusive or non-exclusive patent license.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Compositions and Methods for Diagnosis and Treatment of Chemotherapy-Resistant Neoplastic Disease

John Park (NINDS).

U.S. Provisional Application No. 60/571,296 filed 15 May 2004 (HHS Reference No. E–192–2004/0–US–01); PCT Application No. PCT/US2005/016924 filed 13 May 2005 (HHS Reference No. E–192–2004/0–PCT–02).

Licensing Contact: Jesse S. Kindra; 301/435–5559; *kindraj@mail.nih.gov.*

The present invention relates to compositions and methods for the treatment of a neoplastic disease state (*i.e.* tumors) using RNA interference-mediated down regulation of stathmin expression. This invention also discloses methods for determining the presence or predisposition to a neoplastic disease state.

Stathmin is a cytoplasmic protein that is highly expressed in many different types of tumors such as leukemias, lung cancers and brain tumors. Stathmin is believed to be involved in the regulation of the cell cycle via its interactions with microtubules. Lowering the expression of stathmin in tumor cells using RNA interference (RNAi) technology causes a decrease in tumor cell growth and also causes such cells to become more sensitive to the effects of standard chemotherapeutic agents.

Accordingly, the delivery of stathmin RNAi oligonucleotides either alone or in combination with standard chemotherapies may be used to treat patients with various tumors. For example, retroviruses or adeno-associated viruses containing stathmin RNAi oligonucleotides could be delivered to brain tumors in order to decrease cell growth and increase sensitivity to standard chemotherapies.

Serine Protease Inhibitors

Peter P. Roller, Peng Li (NCI).

PCT Patent Application No. PCT/US2004/34108 filed 15 Oct 2004 (HHS Reference No. E–272–2002/1–PCT–01).

Licensing Contact: Mojdeh Bahar; 301/435–2950; *baharm@mail.nih.gov.*

This disclosure concerns novel serine protease inhibitors and methods for using the inhibitors to reduce tumor progression and/or metastasis. Embodiments of the inhibitors are highly effective, selective inhibitors of matriptase, which has been implicated in tissue remodeling associated with the growth of cancerous tumors and cancer metastasis.

Angiogenesis and tumor invasion require that the normal tissue surrounding the tumor be broken down in a process referred to as tissue remodeling. Tissue remodeling is accomplished by a host of enzymes that break down the proteins in the normal tissue barriers comprising the extracellular matrix. Among the enzymes associated with degradation of the extracellular matrix and tissue remodeling are a number of proteases. The expression of some of these proteases has been correlated with tumor progression.

The disclosed compounds can be used to inhibit matriptase, MTSP1, or both, in vitro and in vivo and thus can be used in the prevention or treatment of conditions characterized by abnormal or pathological serine protease activity. For example, the compounds are useful for prevention or treatment of conditions characterized by the pathological degradation of the extracellular matrix, such as conditions characterized by neovascularization or angiogenesis, including cancerous conditions, particularly metastatic cancerous conditions where matriptase is implicated. The disclosed compounds can be used to decrease the degradation of the cellular matrix and thereby reduce concomitant tumor progression and metastasis. Conditions characterized by abnormal or pathological serine protease activity that can be treated according to the disclosed method include those characterized by abnormal cell growth and/or differentiation, such as cancers and other neoplastic conditions. Typical examples of cancers that may be treated according to the disclosed inhibitors and method include colon, pancreatic, prostate, head and neck, gastric, renal, and brain cancers.

Dated: October 25, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–21831 Filed 11–1–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Method To Disrupt Protein-Protein Interactions and Its Use To Identify Compounds Able To Inhibit HIV–1 Rev Protein Multimerization

George Pavlakis and Leonid Suvoroz (NCI).

HHS Reference No. E–303–2005/0—Research Tool.

Licensing Contact: Sally Hu; 301/435–5606; *hus@mail.nih.gov.*

The invention provides a FRET-based assay for the study of Rev-Rev interaction in vitro, based on YFP and CFP expression constructs for Rev. Using this assay, Rev-derived small peptides that can inhibit Rev-Rev interactions and disrupt dimerization were discovered. This assay can be used as an *in vitro* assay for studying protein-protein interactions in general, and for the discovery of inhibitors or agonists of such interactions as potential drugs against HIV infections, as well as for the

discovery of Rev dimerization inhibitors. Thus this assay can be useful for drug screening.

NIH will not seek patent protection for this invention, and it will be available for licensing through a Biological Materials License (BML) or though a Material Transfer Agreement (MTA).

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Furin Inhibitors and Alpha-Defensin for Preventing Papilloma Virus Infection

Patricia Day, Rebecca Richards, John Schiller, Douglas Lowy, Christopher Buck (NCI).

U.S. Provisional Application No. 60/692,846 filed 21 Jun 2005 (HHS Reference No. E–104–2005/1–US–01).

Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

Available for licensing and commercial development are intellectual properties that claim compositions and methods for preventing papilloma virus (PV) infection in humans using furin inhibitors or alpha-defensins. PV viruses include a minor capsid protein L2 which requires a functional intracellular furin (a cell-encoded proprotein convertase present in endosomes) for escape from the endosomal spaces into the cytoplasm and viral infection. Accordingly, a disruption of viral infection by the inhibition of furin with molecules such as decanoyl-RVKR-CMK is potentially useful as a broad spectrum anti-HPV prophylactic.

Alpha-defensins, which are naturally secreted by the cervix, are reported to have potent and non-type specific anti-HPV properties. They can be administered as a topic microbicide to prevent infection by many HPV genotypes, including types not covered by the vaccines currently in Phase III clinical trials.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Identification of a Fusion/Entry Receptor for Human Herpesvirus-8

Edward A. Berger, Johnan Kaleeba (NIAID).

U.S. Provisional Application No. 60/681,098 filed 13 May 2005 (HHS Reference No. E–051–2005/0–US–01).

Licensing Contact: Robert M. Joynes; 301/594–6565; *joynesr@mail.nih.gov.*

This invention relates to stable, nonhuman cell lines and transgenic mammals having cells that coexpress human xCT as valuable tools for the continuing research of Kaposi's Sarcoma Herpes Virus (KSHV) infection and the development of more effective anti-KSHV therapeutics. Kaposi's sarcoma (KS) is the most common malignancy in AIDS patients and manifests as highly proliferative vascular lesions that appear on body extremities. KSHV is invariably present in all known clinical forms of KS and sero-conversion to KSHV antigens is considered a risk factor for development of the lesions. KSHV is believed to enter target cells by direct fusion of virion membrane with the target cell plasma membrane. The susceptibility of KSHV infection depends on the cell surface expression of the human xCT molecule. xCT plays a role in the membrane fusion step of KSHV infection. The identification of xCT as a receptor for KSHV may pave the way for deciphering the mechanism of KSHV pathogenesis.

This discovery has led to various potential commercial applications for this invention including the following:

- Cell lines expressing recombinant xCT for analysis of KSHV entry/infection
- Construction of xCT transgenic small animals for testing of KSHV inhibitors
- Use of peptides or fragments derived from extracellular regions of xCT as KSHV inhibitors
- Use of specific antibodies (including human versions) against xCT as KSHV inhibitors
- Use of small molecules targeted to xCT as KSHV inhibitors

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Potent HIV–1 Entry Inhibitors and Immunogens

Dimiter S. Dimitrov *et al.* (NCI).

U.S. Patent Application No. 10/506,651 filed 05 Mar 2002; Publication Number US–2005–0106160 (HHS Reference No. E–039–2002/0–US–02).

Licensing Contact: Susan Ano; 301/435–5515; *anos@mail.nih.gov.*

This technology relates to tethered antigenic constructs where flexible linkers join gp120 and the ectodomain of gp41. The HIV–1 envelope Glycoprotein (Env) undergoes conformational changes while driving entry. The inventors developed these constructs to mimic some of the intermediate Env conformations. Tethered Envs with long (15 to 26 amino acid) linkers were stable and potently inhibited fusion mediated by R5, X4 and R5X4 Envs, most likely by exposure of gp41 structures that bind DP178 and cluster II mAbs. The fusion proteins with long linkers exhibited enhanced exposure of DP178 and cluster II mAbs binding gp41 structures that are critical for entry. These findings suggest the existence of conserved structures that are critical for HIV–1 entry, and could be used as novel immunogens for elicitation of broadly neutralizing antibodies and as antigens for selection of potent neutralizing antibodies by phage display.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

A Novel Post-Transcriptional Regulatory Element (PRE) and Its Use in Expression Cassettes and Recombinant Viruses

George N. Pavlakis *et al.* (NCI).

U.S. Patent Number 6,919,442, issued July 19, 2005; EP Patent Application Serial Number 99924362.9 (HHS Reference Number E–143–1998/0).

Licensing Contact: Susan Ano; 301/435–5515; *anos@mail.nih.gov.*

This invention concerns a novel post-transcriptional regulatory element (PRE) that can function as a RNA nucleo-cytoplasmic transport element (NCTE) and its inclusion in expression cassettes and recombinant viruses, including in recombinant attenuated HIV strains. HIV regulates its expression by controlling the nuclear transport of unspliced mRNA encoding structural proteins utilizing the Rev/RRE system. RRE (Rev Responsible Element) is an HIV encoded NCTE, which is part of every HIV RNA encoding the structural genes (gag/pol and env). Rev is an HIV encoded protein that binds to RRE. This interaction is essential for the nucleo-cytoplasmic transport of the RRE-containing viral mRNAs and the expression of Gag/Pol and Env proteins in transport. The invention discusses an attenuated HIV produced by disabling rev/RRE by point mutations and inserting in its place the novel PRE of the invention. The resultant HIV is attenuated between 50 and 200 fold compared to wild-type HIV. In addition to HIV, the novel PRE element can increase expression from many mRNAs not efficiently transported on their own.

In addition to licensing, the technology is available for further development through collaborative

research opportunities with the inventors.

Dated: October 25, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–21832 Filed 11–1–05; 8:45 am]

BILLING CODE 4140–01–P

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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, SBIR Topic 186 Phase II: Target Based High Throughput Screening for the Identification of Radioprotector.

Date: November 22, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: C. Michael Kerwin, PhD, MPH, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institute of Health, 6116 Executive Boulevard, Room 8057, MSC 8329, Bethesda, MD 20892–8329. (301) 496–7421. *kerwinm@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: October 25, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21825 Filed 11–1–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Aging; 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 on Aging Special Emphasis Panel, ROS and Aging.

Date: November 9, 2005.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alessandra M. Bini, PhD, Scientific Review Office, National Institute of Aging, National Institutes of Health, 7201 Wisconsin Avenue, Bethesda MD 20892, 301–402–7708, *binia@nia.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Emphasis Panel, ''DNA and aging brain''.

Date: November 28–29, 2005.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Louise L. Hsu, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–7705, *hsul@exmur.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 25, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21824 Filed 11–1–05; 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, Mechanisms of Mammalian Sperm Capacitation.

Date: November 23, 2005.

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: 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.*

(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: October 25, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21826 Filed 11–1–05; 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 sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, CB Member Conflict.
Date: November 8, 2005.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinbem@crs.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, Circadian Rhythms.
Date: November 9, 2005.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Lawrence Baizer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7850, Bethesda, MD 20892, (301) 435–1257, *baizerl@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, Genes, Genomes, and Genetics Special.
Date: November 10, 2005.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Michael A. Marino, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2216, MSC 7890, Bethesda, MD 20892, (301) 435–0601, *marinomi@csr.nih.gov.*
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, Fellowships in Behavioral and Social Aspects of HIV/AIDS.
Date: November 15, 2005.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, NeuroAIDS and other End-Organ Diseases Study Section.
Date: November 17–18, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Embassy Row, 2015 Massachusetts Avenue, NW., Washington, DC 20008.
Contact Person: Abraham P. Bautista, PhD, Scientist Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Gene and Drug Delivery Systems Study Section.
Date: November 17–18, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn, 7335 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Steven J. Zullo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7849, Bethesda, MD 20892, (301) 435–2810, *zullost@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Molecular and Cellular Biology Study Section.
Date: November 17–18, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.
Contact Person: Kenneth A Roebuck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Bacterial Diseases, Food Safety and General Microbiology.
Date: November 17–18, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.
Contact Person: Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, 301–435–1148, *wachtelm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Research on Children Exposed to Violence.
Date: November 17, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Maribeth Champoux, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7759, Bethesda, MD 20892, 301–594–3163, *champoum@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cognition, Perception and Language Fellowships.
Date: November 17–18, 2005.
Time: 8:30 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Hamilton Crowne Plaza, 14th and K Streets, NW., Washington, DC 20005.
Contact Person: Lynn T. Nielsen-Bohlman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089F, MSC 7848, Bethesda, MD 20892, (301) 594–5287, *nielsenl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemical and Bioanalytical Sciences Fellowship Review Panel.
Date: November 17–18, 2005.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: David R. Jollie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *jollieda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, International Brain Disorders.
Date: November 17–18, 2005.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select, 480 King Street, Alexandria, VA 22314.

Contact Person: Dan D. Gerendasy, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892, (301) 594–6830, *gerendad@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tools for Electron Microscopy.

Date: November 17, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7849, Bethesda, MD 20892, 301–435–1159, *ameros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Hematology.

Date: November 18, 2005.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Delia Tang, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, 301–435–2506, *tangd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, EPIC Member Conflict Study Section.

Date: November 18, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Christopher Sempos, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7770, Bethesda, MD 20892, 301–451–1329, *semposch@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIR/STTR: Early Childhood Behaviors and Adolescent/Adult Addictions.

Date: November 18, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Morrison House, 116 South Alfred Street, Alexandria, VA 22314.

Contact Person: Claire E. Gutkin, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892, 301–594–3139, *gutkincl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cognitive and Linguistic Processes.

Date: November 18, 2005.

Time: 9:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hamilton Crowne Plaza, 14th & K Streets, NW, Washinton, DC 20005.

Contact Person: Lynn T. Nielsen-Bohlman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089F, MSC 7848, Bethesda, MD 20892, 301–594–5287, *nielsenl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vascular Remodeling and Serine Proteases.

Date: November 18, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, 301–435–1195, *sur@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Electromagnetic Devices.

Date: November 18, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tumor Immunology.

Date: November 18, 2005.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paek-Gyu Lee, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095D, MSC 7812, Bethesda, MD 20892, (301) 402–7391, *leepg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drug Development.

Date: November 21, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Willard Intercontinental Hotel, 1401 Pennsylvania Avenue, NE., Washington, DC 20004.

Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Oncology Fellowships and AREA.

Date: November 21–22, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Manzoor Zarger, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6124, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS-associated Opportunistic Infections and Cancer Study Section.

Date: November 21–22, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Jefferson, 1200 6th St., NW., Washington, DC 20036.

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Microscopic Imaging Study Section.

Date: November 21–22, 2005.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ross D. Shonat, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3022A, MSC 7849, Bethesda, MD 20892, 301–435–2786, *shonatr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Group Psychotherapy for Cancer Patients.

Date: November 21, 2005.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gene Expression and Neuronal Development.

Date: November 21, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lawrence Baizer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7850, Bethesda, MD 20892, (301) 435–1257, *baizerl@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 25, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21829 Filed 11–1–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP), NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM); Availability of a Second Expert Panel Request on the Evaluation of the Current Validation Status of In Vitro Test Methods for Identifying Ocular Corrosives and Severe Irritants

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH), DHHS.

ACTION: Report availability and request for comments.

SUMMARY: NICEATM announces availability of the report ''The Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) Expert Panel Evaluation of the draft Background Review Document Addendum for In Vitro Test Methods For Identifying Ocular Corrosives And Severe Irritants.'' NICEATM invites public comment on the expert panel report. Copies of the expert panel report may be obtained on the ICCVAM/NICEATM Web site at *http://iccvam.niehs.nih.gov*, or by contacting NICEATM at the address given below.

DATES: Comments should be sent by mail, fax, or e-mail to the address given below by December 2, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Raymond Tice at NICEATM, NIEHS, P.O. Box 12233, MD EC–17, Research Triangle Park, NC, 27709, (phone) 919–541–4482, (fax) 919–541–0947, (e-mail) *niceatm@niehs.nih.gov*.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2004, NICEATM released draft background review documents (BRDs) that provided information about the current validation status of four in vitro test methods for detecting ocular corrosives and severe irritants (**Federal Register**, Vol. 69, No. 212, pp. 64081–64082, November 3, 2004). In conjunction with ICCVAM, NICEATM convened an expert panel meeting on January 11–12, 2005, to independently assess the validation status of the four in vitro test methods. The expert panel report from the January 2005 meeting (''first expert panel report'') was released in March 2005 and is available at *http://iccvam.niehs.nih.gov/methods/eyeirrit.htm*. Public comments at the meeting indicated that additional data could be made available that had not been provided in response to earlier requests for data announced in the **Federal Register** in March (Vol. 69, No. 57, pp. 13859–13861, March 24, 2004) and November 2004. The expert panel recommended that NICEATM conduct a reanalysis of the accuracy and reliability of each test method that would include these data. In response to this recommendation, NICEATM published a notice in the **Federal Register** (Vol. 70, No. 38, pp. 9661–9662, February 28, 2005) requesting additional in vitro data on these four in vitro ocular irritancy test methods, corresponding in vivo rabbit eye test method data, as well as any human ocular exposure/injury data (either from human studies or accidental exposure). Subsequently, NICEATM received additional in vitro and in vivo data that were used for the revised accuracy and reliability analyses and considered in revising the list of proposed reference substances.

NICEATM released the revised accuracy and reliability analyses and the revised list of proposed reference substances as an addendum to the draft BRDs and announced its availability in the **Federal Register** (Vol. 70, No. 142, pg. 43149, July 26, 2005). NICEATM subsequently announced a second meeting of an expert panel by teleconference on September 19, 2005 in the **Federal Register** (Vol. 70, No. 174, pg. 53676, September 9, 2005). The second expert panel report is a product of the teleconference meeting and is being made available for public comment. ICCVAM will consider the first and second expert panel reports, other relevant background materials, and all comments received from the public and the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM) on this topic in finalizing ICCVAM test method recommendations for these methods.

Request for Comments

NICEATM invites the submission of written comments on the second expert panel report. When submitting written comments please include appropriate contact information (name, affiliation, mailing address, phone, fax, e-mail and sponsoring organization, if applicable). All written comments received by the deadline listed above will be posted on the ICCVAM/NICEATM Web site and made available to ICCVAM agency representatives for their consideration prior to the development of final ICCVAM recommendations on these test methods.

An ICCVAM test method evaluation report, which includes the ICCVAM test method recommendations, will be forwarded to appropriate Federal agencies for their consideration. This report also will be available to the public on the ICCVAM/NICEATM Web site and by request to NICEATM.

Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from fifteen Federal regulatory and research agencies that use or gerate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability, and promotes the scientific validation and regulatory acceptance of toxicological test methods that more accurately assess the safety and hazards of chemicals and products and that refine, reduce, and replace animal use. The ICCVAM Authorization Act of 2000 (Pub. L. 106–545, available at *http://iccvam.niehs.nih.gov/about/PLI06545.htm*) establishes ICCVAM as a permanent interagency committee of the NIEHS under the NICEATM. NICEATM administers the ICCVAM and provides scientific and operational support for ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of Federal agencies. Additional information about ICCVAM and NICEATM can be found at the following Web site: *http://www.iccvam.niehs.nih.gov*.

Dated: October 25, 2005.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 05–21830 Filed 11–1–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–22850]

Environmental Assessment and Draft Finding of No Significant Impact for the Decommissioning and Excessing of the U.S. Coast Guard Cutter MACKINAW (WAGB–83)

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability and request for comments.

SUMMARY: The U.S. Coast Guard (USCG) announces the availability of the Environmental Assessment (EA) and Draft Finding of No Significant Impact (FONSI) for the Decommissioning and excessing of the U.S. Coast Guard Cutter USCGC MACKINAW (WAGB–83) in Cheboygan, Michigan and invites comments as part of the National Environmental Policy Act (NEPA) process. The EA evaluates the environmental and socioeconomic impacts of the Proposed Action. The Draft FONSI records the USCG's determination that the Proposed Action would have no significant impact on the environment. The U.S. Coast Guard also announces the development of a Memorandum of Agreement to resolve potential adverse effects to a historic property and invites comments as part of the public involvement process under Section 106 of the National Historic Preservation Act (NHPA).

DATES: Comments and related material must reach Coast Guard Headquarters on or before November 26, 2005.

ADDRESSES: Please submit comments by only one of the following means, and in choosing among the options for submitting your comments, please give due regard to any difficulties and delays associated with delivery of mail through the U.S. Postal Service to Federal facilities:

(1) Electronically to Susan Hathaway at *SHathaway@comdt.uscg.mil*

(2) By delivery to Commandant, United States Coast Guard Office of Logistics and Engineering, Environmental Management (CG–443), 2100 Second St. SW., Rm. 6109, Washington, DC 20593 Attn: S. Hathaway.

(3) By fax send to Susan Hathaway at (202) 267–4219.

FOR FURTHER INFORMATION CONTACT: Commandant, United States Coast Guard, Office of Logistics and Engineering, Environmental Management (CG–443), 2100 Second St. SW., Rm. 6109, Washington, DC 20593 ATTN: Susan Hathaway, or send by fax at (202) 267–4219 or by e-mail at *SHathaway@comdt.uscg.mil.*

To view and download the EA and Draft FONSI, please go to *http://www.uscg.mil/systems/gse/gsec-3H.htm* and scroll down the left side to: Planning—NEPA, and then to USCGC MACKINAW.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related material on the EA and the MOA. If you do so, please include your name and address. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Proposed Action

The USCGC MACKINAW (WAGB–83), constructed in 1944, was the largest and most powerful icebreaker at the time and represented the state of the art in icebreaking technology. After over 60 years of continuous service, USCGC MACKINAW (WAGB–83) has reached the end of its service life. The USCG is required to identify and declare excess property. The USCG would decommission and excess the USCGC MACKINAW (WAGB–83) in 2006 through the Federal Real Property Service Act and Federal Real Property Management Regulations, unless a Congressional mandate to transfer ownership of the vessel to another entity is issued.

Preparation of the EA for the decommissioning and excessing of USCGC MACKINAW (WAGB–83) is being conducted in accordance with the National Environmental Policy Act (NEPA) of 1969 (Section 102[2][c]) and its implementing regulations at Title 40 Code of Federal Regulations, Part 1500.

Environmental Assessment

An EA has been prepared for the proposed action. The EA identifies and examines reasonable alternatives and assesses their potential impact to the environment.

As a result of the USCG reporting the vessel as ''excess personal property,'' as that term is defined in the Federal Property Management Regulations, Title 41, Part 102, Section 36.40 of the Code of Federal Regulations (41 CFR 102–36.40), the vessel could eventually be removed from USCG custody and control, and possibly Federal ownership through one of the following processes: (1) Specific or ''special'' legislation directing or authorizing conveyance of the vessel to a specific entity (requires enactment of legislation by Congress and subsequent signing into law by President); (2) the General Services Administration (GSA) personal property disposal process for transfer to other Federal agencies, (41 CFR 102–36); (3) the GSA personal property disposal process for conveyance to a state or local government, or non-profit organization (41 CFR 102–37); (4) the GSA personal property disposal process for sale to the highest bidder; (5) direct Coast Guard transfer to the USCG Auxiliary, Service Educational Activities (SEA's), or a non-profit public body or private organization, (14 U.S.C. 641);) or (6) if transfer of ownership through one of the above processes is not possible, scrapping of the vessel.

The Coast Guard initiated Section 106 consultation under that National Historic Preservation Act. The consultation was conducted with the Michigan State Historic Preservation Officer (MISHPO) acting as the lead State Historic Preservation Officer for states bordering the Great Lakes. USCG and MISHPO developed a Memorandum of Agreement for the decommissioning of the USCGC MACKINAW (WAGB–83) and its declaration as excess property. The General Services Administration and the Illinois State Historic Preservation Officer also participated in consultation and concur with the MOA.

We are requesting your comments on environmental concerns you may have related to the EA.

Dated: October 25, 2005.

G.T. Blore,

Director, Operations Policy.

[FR Doc. 05–21875 Filed 11–1–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–22821]

National Boating Safety Activities: Funding for National Nonprofit Public Service Organizations

AGENCY: Coast Guard, DHS.

ACTION: Notice of funds availability.

SUMMARY: The Coast Guard seeks applications for fiscal year 2006 grants and cooperative agreements from national, nongovernmental, nonprofit public service organizations. The Boating Safety Financial Assistance Program is listed in section 97.012 of the Catalog of Federal Domestic Assistance. 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 November 1, 2005. Proposals for the fiscal year 2006 grant cycle must be received before 3 p.m. Eastern time, January 23, 2006.

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–2005–22821 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 seven project areas of particular interest 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 for national recreational boating safety activities of national nonprofit public service organizations. It is anticipated that approximately $4,750,000 will be made available for fiscal year 2006. Thirty-one awards totaling $2,950,000 were made in fiscal year 2005 ranging from $7,000 to $495,000. 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 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 November 1, 2005. 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) 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 additional future support, provided funds are available, the project continues to support the needs of the government, and the achieved results warrant further support. Award of continuation grants will be made on a strict case-by-case basis to assist planning in 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 2007 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 National 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. Boat Responsibly!'' 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, boater education, safety and security issues, propeller injury prevention, and the dangers of carbon monoxide, as well as boating under the influence of alcohol or drugs. 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 National 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 subjects that afford the participants professional development opportunities and educational enhancement. Subjects should focus on, but not be limited to: life jacket wear, safety and security issues, propeller injury prevention, the dangers of carbon monoxide, boater education, vessel safety, outreach and awareness efforts, as well as boating under the influence of alcohol or drugs. Point of Contact: Ms. Jo Calkin, 202–267–0994.

3. *Federal/State Cooperative Partnering Efforts.* The Coast Guard seeks a grantee to provide programs to encourage greater participation and uniformity in State 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. *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's Maritime Law Enforcement Academy in Charleston, South Carolina. Point of Contact: Mr. Rick Gipe, 202–267–0985.

5. *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 rates should be determined by actual observation of boaters. Point of Contact: Mr. Bruce Schmidt, 202–267–0955.

6. *Develop New National Boating Survey Instrument and Methodology.* The Coast Guard seeks a grantee to develop, in liaison with multiple recreational boating interests, a new national boating survey instrument and methodology. This instrument and methodology are to be developed in consensus with various boating safety, boating industry and boating user groups, as well as Federal agencies and academia. In November 2004, a collective group met in East Lansing, Michigan to discuss boating research, and to recommend the highest priority actions that need to take place in the area of recreational boating research. This grant project is to respond to the recommendations provided by the November 2004 meeting by developing a survey instrument and methodology that will be implemented by the Coast Guard at a later date. Boating safety will be considered the main topic for the survey. The survey may include research on other recreational boating topics supported by other survey partners. Point of Contact: Mr. Barry Nobles, 202–267–0986.

7. *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. Rick Gipe, 202–267–0985.

We encourage proposals addressing other boating safety concerns.

Potential grantees should focus on partnership, *e.g.*, exploring other sources, linkages, in-kind contributions, cost sharing, and partnering with other organizations or corporations. The primary goal of the National Recreational Boating Safety Program is to reduce fatalities to specific levels for each upcoming year. With your application, we encourage you to list and describe the tools you will use to measure your grant's performance toward achieving this goal or toward achieving a specific objective that will result in the achievement of this goal. For some examples of tools, we invite you to explore this CDC Web site: *http://www.cdc.gov/ncipe/pub-res/demonstr.htm.*

Please note: We published a Notice of availability for FY05 funds on October 6, 2004, 69 FR 59943. In that Notice, we stated that it would be the final year that our office would publish a notice of availability of funding for national nonprofit public service organizations in the **Federal Register**. We stated that, under Department of Homeland Security policy, we would announce future availability of funding electronically, at the Web site: *www.grants.gov*. Because the FY06 Notice of Funds Availability is not yet available on that website, we are publishing the information in the **Federal Register** again this year to provide information to the public in a timely manner.

Dated: October 27, 2005.

Gary T. Blore,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 05–21857 Filed 11–1–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent to Request Renewal From OMB of One Current Public Collection of Information: Corporate Security Review (CSR)

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: TSA invites public comment on one currently approved information collection requirement abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act.

DATES: Send your comments by January 3, 2006.

ADDRESSES: Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer at the above address or by telephone (571) 227–1995 or facsimile (571) 227–2594.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Corporate Security Review (CSR).

Type of Request: Renewal of one current public collection.

OMB Control Number: 1652–0036.

Forms(s): Corporate Security Review Form.

Affected Public: Surface Transportation System Owners and Operators.

Abstract: The Aviation and Transportation Security Act of 2001 (ATSA) (Public Law 107–71) requires TSA to oversee the security of the nation's surface transportation system. Specifically, ATSA grants TSA authority to execute its responsibilities for:

- Enhancing security in all modes of transportation;

• Assessing intelligence and other information in order to identify threats to transportation security; and

• Coordinating countermeasures with other Federal agencies to address such threats, including the authority to receive, assess, and distribute intelligence information related to transportation security (49 U.S.C. 114(d), (f)(1)–(5), (h)(1)–(4)).

To support these requirements, TSA assesses the current security practices in the surface transportation sector by way of site visits and interviews through it's Corporate Security Review (CSR) program, one piece of a much larger domain awareness, prevention, and protection program in support of TSA's and Department of Homeland Security's missions. TSA is seeking to renew its OMB approval for this information collection so that TSA can continue to ascertain minimum-security standards and identify coverage gaps, activities that are critical to its mission of ensuring transportation security.

The CSR is an ''instructive'' review that provides TSA with an understanding of each surface transportation owner/operator's ability to protect its critical assets. In carrying out CSRs, teams of modal experts from TSA conduct site visits of critical highway, mass transit, pipeline, and rail assets throughout the nation. The TSA team analyzes the owner's/operator's security plan and determines if the mitigation measures included in the plan are being implemented. In addition to reviewing the security plan document, TSA tours the site and interviews the owner's/operator's security coordinator, employees, and contractors. TSA collects information on eleven topics: threat assessments, vulnerability assessments, security planning, credentialing, secure areas, infrastructure protection, physical security countermeasures, cyber security, training, communications, and exercises. TSA conducts this collection through voluntary face-to-face visits, which last an average of two days, at the company/agency headquarters of surface transportation owners/operators. Typically, TSA sends three employees to conduct a two-day discussion/interview with representatives from the company/agency owner/operator. At the conclusion of these site visits, TSA completes the Corporate Security Review form, which asks questions concerning the above mentioned topics. TSA does not plan to collect information from small businesses or other small entities at this time.

The annual hour burden for this information collection is estimated to be 1,200 hours. While TSA estimates a total of 500 potential respondents, this estimate is based on TSA conducting 75 visits per year, each visit lasting 2 days (2 8-hour work days). The total annual cost burden to respondents is $0.00.

Number of Respondents: 500.

Estimated Annual Burden Hours: An estimated 1,200 hours annually.

Issued in Arlington, Virginia, on October 25, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. 05–21813 Filed 11–1–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal Sent to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; 1018–0109; Federal Assistance Grant Application Booklet, 50 CFR Part 80

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent a request to OMB to renew approval for our information collection associated with the Federal Assistance Grant Application Booklet. The current OMB control number for this information collection is 1018–0109, which expires October 31, 2005. We have requested that OMB renew approval of this information collection for a 3-year term.

DATES: You must submit comments on or before December 2, 2005.

ADDRESSES: Send your comments and suggestions on this information collection renewal to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–6566 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requirements, explanatory information, or related booklet, contact Hope Grey, Information Collection Clearance Officer, at the above addresses or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). Federal agencies 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.

On August 3, 2005, we published in the **Federal Register** (70 FR 44678) a 60-day notice of our intent to request renewal of this information collection authority from OMB. In that notice, we solicited public comments for 60 days ending October 3, 2005. We did not receive any comments regarding this notice.

We administer several grant programs under the authority of the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669i), the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777l), the Endangered Species Act (16 U.S.C. 1531 *et seq.*), the Clean Vessel Act (16 U.S.C. 777c), the Sportfishing and Boating Safety Act (16 U.S.C. 777g–1), and the Coastal Wetlands Planning, Protection, and Restoration Act (16 U.S.C. 3951–3956). The Federal Assistance Grant Application Booklet provides the public information on how to apply for these Federal grants. We collect information relevant to eligibility, substantiality, relative value, and budget information from applicants in order to make awards of grants under these programs. We also collect financial and performance information to track costs and accomplishments of these grant programs. We need this information to support the grant work of our Division of Federal Assistance. We have not made any changes to the booklet.

Title: Federal Assistance Grant Application Booklet, 50 CFR 80.

Approval Number: 1018–0109.

Frequency of Collection: Annually.

Description of Respondents: State, territorial (the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa), and local governments, and others receiving grant funds.

Number of applicants: 200.

Total Annual Burden Hours:

Action	Completion time (hours)	Annual number of responses	Annual hour burden
Initial Proposal	80	4,000	320,000
Amendment	2	1,750	3,500
Totals		5,750	323,500

We again invite comments on: (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: October 5, 2005.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 05–21796 Filed 11–1–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for the Florida Scrub-Jay Resulting from the Proposed Construction of a Combination of Office Space and Three-Story Townhomes in the Village of Tequesta, Palm Beach County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Sundown Development and Realty (Applicant) is requesting an incidental take permit (ITP) for a period of five years, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). The Applicant anticipates take of three federally threatened Florida scrub-jays (*Aphelocoma coerulescens*) (scrub-jay) incidental to clearing approximately 0.70 acre of scrub-jay foraging and roosting habitat in preparation for construction of a combination of office space and three-story townhomes on a 5.25-acre parcel (project). The anticipated take would occur in section 30, Township 40 South, Range 43 East, Village of Tequesta, Palm Beach County, Florida. The Applicant's Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the project on the scrub-jay. These measures are also outlined in the **SUPPLEMENTARY INFORMATION** section below.

The Service announces the availability of the Applicant's ITP application, HCP and Environmental Assessment (EA). Copies of the application, HCP and EA may be obtained by making a request to the Southeast Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to section 10 of the Act and National Environmental Policy Act (NEPA) regulations (40 CFR 1506.6).

DATES: Written comments on the ITP application, EA, and HCP should be sent to the Service's Southeast Regional Office (see **ADDRESSES**) and should be received on or before January 3, 2006.

ADDRESSES: Persons wishing to review the application, EA, and HCP, may obtain a copy by writing the Service's Southeast Regional Office, at the address below. Please reference permit application number TE095780–0 in such requests. Documents will also be available for public inspection by appointment during normal business hours at either the Southeast Regional Office, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or at the South Florida Ecological Services Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960–3559 (Attn: Field Supervisor).

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, Southeast Regional Office (see **ADDRESSES** above), at 404–679–7313, facsimile: 404–679–7081; or Ms. Constance Cassler, Fish and Wildlife Biologist, South Florida Ecological Services Office (see **ADDRESSES** above), at 772–562–3909, extension 243.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit application number TE095780–0 in such comments. You may mail comments to the Service's Southeast Regional Office (see **ADDRESSES**). You may also comment via the internet to *david_dell@fws.gov.* Please submit comments over the internet as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation that we have received your e-mail message, contact us directly at either telephone number listed above (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand-deliver comments to either Service office listed above (see **ADDRESSES**). 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 administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, 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.

The scrub-jay is geographically isolated from other subspecies of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (well drained, sandy soils supporting a growth of oak dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation, which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

Although little is known about the historic distribution and abundance of scrub-jays in southeastern Florida, it can be reasonably assumed that this species once occupied most of the non-forested xeric uplands along the Atlantic Coast

Ridge of southeastern Florida. Martin and northern Palm Beach counties have experienced tremendous human population growth over the last 100 years, and as a result, much of the natural environment in this area has been altered. Much of the commercial and residential development has occurred on the xeric uplands that historically supported scrub-jay populations. What remains is largely degraded, due to the invasion by exotic species and by interruption of the natural fire regime, which is needed to maintain xeric uplands in conditions suitable for scrub-jays.

Scrub-jays using the project site are part of a larger complex of this species that occupy xeric uplands of southeastern Florida, from northern Palm Beach County northward to the St. Lucie River in northeastern Martin County. The largest assemblage of scrub-jays in this metapopulation occurs in and around Johnathan Dickinson State Park. The continued survival and recovery of scrub-jays in this area is dependent on the maintenance of suitable habitat and the restoration of unsuitable habitat.

Scrub-jay use of the project site and adjacent lands has been assessed on several occasions. Scrub-jay surveys were conducted by Environmental Services, Inc., from June 30 to July 3, 2003. A Service biologist confirmed the survey results and delineated additional habitat being utilized for foraging by three scrub-jays on November 19, 2003. The project site comprises areas of bare sand, concrete pads, native and exotic vegetation, and can be classified as disturbed upland scrub. Scattered sandy patches interspersed with low growing vegetation provide foraging and caching opportunities for scrub-jays.

The project site is surrounded by Great American RV on the south and by Cypress Manor Apartments on the west. The project site and surrounding lands have been negatively influenced by previous land clearing, development, and invasion by exotic species. Due to the proximity of the project site to existing residential development and urban infrastructure, fire has been actively excluded due to safety concerns. As a result, the condition of the xeric habitat within the project site is degraded; periodic fire or land management practices that mimic fire are required to maintain habitat conditions suitable for the scrub-jay.

Land clearing in preparation for a combination of office space and three-story town homes would destroy habitat and could result in death of, or injury to, scrub-jays, incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with the proposed development would reduce the availability of foraging habitat for scrub-jays.

The Applicant's HCP and the Service's EA describe the following minimization and mitigation strategy which would be employed by the Applicant to offset the impacts of the project to the scrub-jay:

- The Applicant agrees to contribute $109,830.97 to the Florida Scrub Jay Conservation Fund. As discussed in the Applicant's HCP, this amount will purchase 1.4 acres of scrub habitat (providing a 2:1 compensation ratio) at current land values, plus a fee for perpetual management, along with a 5 percent administrative (overhead) fee.
- The Applicant agrees to plant a 0.20 acre portion of the landscape buffer, required by local building codes, with scrub vegetation as part of the Casa del Sol project.
- The Applicant agrees that no land clearing activities will take place during the scrub-jay breeding or nesting season (March-June).

The EA considers the environmental consequences of one action alternative that would require issuance of an ITP and two alternatives in which an ITP would not be issued. The preferred alternative would result in the loss of about 0.70 acre of occupied scrub-jay habitat according to the HCP as submitted and described above. Under the proposed alternative, as mitigation, the Applicant would contribute funding for scrub-jay conservation. The Applicant's contribution to the Florida Scrub Jay Conservation Fund would be used to acquire and manage scrub-jay habitat in other areas in Palm Beach County, Florida and to help ensure the long-term survival of viable populations of the species.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised based on our consideration of public comments received in response to this notice and is based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Noreen Walsh,

Acting Regional Director, Southeast Region.

[FR Doc. 05–21799 Filed 11–1–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Fiscal Year 2006 Tribal Landowner Incentive Program; Request for Grant Proposals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for proposals.

SUMMARY: We, the Fish and Wildlife Service (Service), are soliciting project proposals for Federal assistance under the Tribal Landowner Incentive Program (TLIP). The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year (FY) 2006 allocated $23,886,000 (subject to potential rescission to meet other important national priorities) from the Land and Water Conservation Fund for conservation grants to States, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, the Northern Mariana Islands, American Samoa, and Tribes under a Landowner Incentive Program. The Service has targeted $2,388,600 for TLIP.

DATES: Project proposals must be postmarked by January 31, 2006 and submitted to the appropriate Regional Office (see Table 1 in **ADDRESSES**).

ADDRESSES: For information regarding collection requirements and application kit, applicants should contact the Native American Liaison in the Service's Regional Office for the State in which the proposed project would occur. The contact information for each Regional Office is listed in Table 1 below. Information on the TLIP is also available from the U.S. Fish and Wildlife Service, Office of the Native American Liaison, 1849 C Street, NW., Mail Stop 3251, Washington, DC 20240, and electronically at *http://grants.fws.gov/tribal.html*.

Project proposals should be submitted to the Service's Regional Office for the State in which the proposed project would occur (see Table 1 under this section). You must submit one original and two copies of the complete proposal. We will not accept facsimile project proposals.

TABLE 1.—WHERE TO SEND PROJECT PROPOSALS AND LIST OF REGIONAL CONTACTS

Service region	States where the project will occur	Where to send your project proposal	Regional Native American liaison and phone number
Region 1	Hawaii, Idaho, Oregon, Washington, Nevada, and California.	Regional Director; U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, OR 97232–4181.	Scott L. Aikin (503) 231–6123
Region 2	Arizona, New Mexico, Oklahoma, and Texas	Regional Director; U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., P.O. Box 1306, Albuquerque, NM 87103–1306.	John Antonio (505) 248–6810
Region 3	Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.	Regional Director; U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, MN 55111–4080.	John Leonard (612) 713–5108
Region 4	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.	Regional Director; U.S. Fish and Wildlife Service, 1875 Century Blvd, Rm. 410, Atlanta, GA 30345.	Kyla Hastie (404) 679–7133
Region 5	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.	Regional Director; U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589.	D.J. Monette (413) 253–8662
Region 6	Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Regional Director; U.S. Fish and Wildlife Service, 134 Union Boulevard, Suite 400, Lakewood, CO 80228.	David Redhorse (303) 236–4575
Region 7	Alaska	Regional Director; U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503–6199.	Sue Detwiler (907) 786–3868

FOR FURTHER INFORMATION CONTACT: For further information, contact the Native American Liaison in the appropriate Regional Office (see Table 1 under **ADDRESSES** or Patrick Durham, Office of the Native American Liaison, U.S. Fish and Wildlife Service, 1849 C Street, Mail Stop 3012 MIB, Washington, DC 20240, (202) 208–4133.

Request for Proposals: The Service invites submission of grant proposals for the protection and management of habitat to benefit federally listed, proposed, or candidate species or other at-risk species from federally recognized Indian tribal governments (including Alaska Native Villages). This program supports the efforts of tribal governments in programs that develop or augment the capacity to manage, conserve, or protect fish and wildlife species of concern through the provision of funding and technical support.

For complete application guidelines, please refer to *http://www.fws.gov/grants/tribal.html* or contact the Native American Liaison in your Fish and Wildlife Service Region (see Table 1 in **ADDRESSES**). The Application Kit outlines program requirements, selection criteria, and award procedures.

Dated: October 24, 2005.

Paul Hoffman,

Acting Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 05–21690 Filed 11–1–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Fiscal Year 2006 Tribal Wildlife Grants; Request for Grant Proposals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for proposals.

SUMMARY: We, the Fish and Wildlife Service (Service), are soliciting project proposals for Federal assistance under the Tribal Wildlife Grants program (TWG). The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year (FY) 2006 authorized an appropriation of $68,174,000 (subject to potential rescission to meet other important national priorities) for wildlife conservation grants to States and to the District of Columbia, U.S. Territories, and Tribes under provisions of the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act, for the development and implementation of programs for the benefit of wildlife and their habitat, including species that are not hunted or fished. The Act further specified that the Service use $5,971,000 of the funds for a competitive grant program available to federally recognized Indian Tribes. This allows the Secretary, through the Director of the Service, to manage a separate Tribal grant program not subject to the provisions of the formula-based State Wildlife Grants program, or other requirements of the State Wildlife Grants portion of Public Law 107–63.

DATES: Project proposals must be postmarked by January 31, 2006 and submitted to the appropriate Regional Office (see Table 1 in **ADDRESSES**).

ADDRESSES: For information regarding collection requirements and application kit, applicants should contact the Native American Liaison in the Service's Regional Office for the State in which the proposed project would occur. The contact information for each Regional Office is listed in Table 1 below. Information on the TWG is also available from the U.S. Fish and Wildlife Service, Office of the Native American Liaison, 1849 C Street, NW., Mail Stop 3251, Washington, DC 20240, fax (202) 501–3524 and electronically at *http://grants.fws.gov/tribal.html.*

Send your project proposal to the Service's Regional Office for the State in which the proposed project would occur (see Table 1 under this section). You must submit one original and two copies of the complete proposal. We will not accept facsimile project proposals.

TABLE 1.—WHERE TO SEND PROJECT PROPOSALS AND LIST OF REGIONAL CONTACTS

Service region	States where the project will occur	Where to send your project propsal	Regional Native American liaison and phone number
Region 1	Hawaii, Idaho, Oregon, Washington, Nevada, and California.	Regional Director; U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE., 11th Avenue, Portland, OR 97232–4181.	Scott L. Aikin (503) 231–6123
Region 2	Arizona, New Mexico, Oklahoma, and Texas	Regional Director; U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., P.O. Box 1306, Albuquerque, NM 87103–1306.	John Antonio (505) 245–6810
Region 3	Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.	Regional Director; U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, MN 55111–4080.	John Leonard (612) 713–5108
Region 4	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.	Regional Director; U.S. Fish and Wildlife Service, 1875 Century Blvd., Rm. 410, Atlanta, GA 30345.	Kyla Hastie (404) 679–7133
Region 5	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.	Regional Director; U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589.	D.J. Monette (413) 253–8662
Region 6	Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Regional Director; U.S. Fish and Wildlife Service, 134 Union Boulevard, Suite 400, Lakewood, CO 80228.	David Redhorse (303) 236–4575
Region 7	Alaska	Regional Director; U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503–6199.	Sue Detwiler (907) 786–3868

FOR FURTHER INFORMATION CONTACT: For further information, contact the Native American Liaison in the appropriate Regional Office (see Table 1 under **ADDRESSES**) or Patrick Durham, Office of the Native American Liaison, U.S. Fish and Wildlife Service, 1849 C Street, Mail Stop 3012 MIB, Washington, DC 20240 (202)208–4133.

Request for Proposals: The Service invites submission of grant proposals from federally recognized Indian tribal governments (including Alaska Native Villages) for the development and implementation of programs for the benefit of wildlife and their habitat, including species that are not hunted or fished. This program supports the efforts of federally recognized Tribal governments in projects that develop or augment the capacity to manage, conserve, or protect fish and wildlife resources through the provision of funding and technical support.

For complete application guidelines, please refer to *http://www.fws.gov/grnts/tribal.html* of contact the Native American Liaison in your Fish and Wildlife Service Region (see Table 1 in **ADDRESSES**). The Application Kit outlines program requirements, selection criteria, and award procedures.

Dated: October 24, 2005.

Paul Hoffman,

Acting Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 05–21691 Filed 11–1–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Sport Fishing and Boating Partnership Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Fish and Wildlife Service announces a meeting designed to foster partnerships to enhance public awareness of the importance of aquatic resources and the social and economic benefits of recreational fishing and boating in the United States. This meeting, sponsored by the Sport Fishing and Boating Partnership Council (Council), is open to the public, and interested persons may make oral statements to the Council or may file written statements for consideration.

DATES: The meeting will be held on Thursday, November 10, 2005, and Friday, November 11, 2005, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Sheraton San Diego Hotel and Marina, 1380 Harbor Island Drive, San Diego, California 92101; telephone (619) 291–2900.

Summary minutes of the conference will be maintained by the Council Coordinator at 4401 N. Fairfax Drive, MS–3101–AEA, Arlington, VA 22203, and will be available for public inspection during regular business hours within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

FOR FURTHER INFORMATION CONTACT: Douglas Hobbs, Council Coordinator, at (703) 358–2336.

SUPPLEMENTARY INFORMATION: The Sport Fishing and Boating Partnership Council was formed in January 1993 to advise the Secretary of the Interior, through the Director, U.S. Fish and Wildlife Service, about sport fishing and boating issues. The Council represents the interests of the public and private sectors of the sport fishing and boating communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council includes the Director of the Service and the president of the International Association of Fish and Wildlife Agencies, who both serve in ex officio capacities. Other Council members are Directors from State agencies responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resource conservation, aquatic resource outreach and education, and tourism. The Council will convene to discuss: (1) The Council's continuing role in providing input to the Fish and Wildlife Service on the Service's strategic plan for its Fisheries Program; (2) The Council's work on the National Fish Habitat Initiative as both a lead partner

and its role as lead in building a Fish Habitat Partners Coalition; (3) The Council's work in its role as a facilitator of discussions with Federal and State agencies and other sportfishing and boating interests concerning a variety of national boating and fisheries management issues; and (3) The Council's role in providing the Interior Secretary with information about the implementation of the Strategic Plan for the National Outreach and Communications Program. The Interior Secretary approved the Strategic Plan in February 1999, as well as the five-year, $36-million federally funded outreach campaign authorized by the 1998 Sportfishing and Boating Safety Act that is now being implemented by the Recreational Boating and Fishing Foundation, a private, nonprofit organization.

Dated: October 20, 2005.

Matt Hogan,

Acting Director.

[FR Doc. 05–21788 Filed 11–1–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and are new, modified, discontinued, or completed since the last publication of this notice on July 22, 2005. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Sandra L. Simons, Manager, Contract Services Office, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2902.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939 and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

The March 10, 2005, notice should be used as a reference point to identify changes. The numbering system in this notice corresponds with the numbering system in the March 10, 2005, notice.

Definitions of Abbreviations Used in this Document

BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project
CVP Central Valley Project
CRSP Colorado River Storage Project
FR **Federal Register**
IDD Irrigation and Drainage District
ID Irrigation District
M&I Municipal and Industrial
NMISC New Mexico Interstate Stream Commission
O&M Operation and Maintenance
P–SMBP Pick-Sloan Missouri Basin Program
PPR Present Perfected Right
SOD Safety of Dams
SRPA Small Reclamation Projects Act of 1956
WD Water District

Pacific northwest region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

New contract action:

7. Lake Lowell water users, Boise Project, Idaho-Oregon: Repayment

contracts for reimbursable cost of SOD modifications to Deer Flat Dam.

Modified contract action:

16. Eighteen irrigation water user entities, Boise Project, Idaho: Long-term renewal and/or conversion of 15 irrigation water service contracts for supplemental irrigation use of up to 57,318 acre-feet of storage space in Lucky Peak Reservoir, a Corps of Engineers' project on the Boise River, Idaho.

Mid-pacific region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

New contract action:

43. Eighteen contractors in the Klamath Project, Oregon: Amendment of 18 repayment contracts or negotiation of new contracts to allow for recovery of additional capital costs for the Klamath Project. These contract actions will be accomplished through amendments to the existing repayment contracts or negotiation of new contracts.

Modified contract action:

2. Contractors from the American River Division, Cross Valley Canal, Delta Division, San Felipe Division, and West San Joaquin Division; CVP; California: Renewal of 28 long-term water service contracts; water quantities for these contracts total in excess of 2.1M acre-feet. These contract actions will be accomplished through long-term renewal contracts pursuant to Public Law 102–575. Prior to completion of negotiation of long-term renewal contracts, existing interim renewal water service contracts may be renewed through successive interim renewal of contracts. Execution of long-term renewal contracts have been completed for the Sacramento River, Friant, Shasta, and Trinity River Divisions. Long-term renewal contract execution is continuing for the other contractors.

Discontinued contract action:

22. City of Vallejo, Solano Project, California: Execution of long-term Warren Act contract for conveyance of nonproject water. This contract will allow Solano Project facilities to be used to deliver nonproject water to the City of Vallejo for use within its service area.

Completed contract actions:

2. Contractors from the American River Division, Cross Valley Canal, Delta Division, Friant Division, Sacramento River Division, San Felipe Division, Shasta Division, Trinity River Division, and West San Joaquin Division; CVP; California: Renewal of up to 114 long-term water service contracts; water quantities for these contracts total in excess of 3.4M acre-feet. These contract actions will be accomplished through long-term renewal contracts pursuant to Public Law 102–575. Prior to completion of negotiation of long-term renewal contracts, existing interim renewal water service contracts may be renewed through successive interim renewal of contracts. Execution of long-term renewal contracts have been completed for the Friant, Shasta, and Trinity River Divisions. Long-term renewal of the remaining 28 contracts for 2.1M acre-feet of water is continuing.

32. Widren WD, CVP, California: Proposed assignment of up to 2,900 acre-feet of Widren WD's CVP water to Westlands WD for irrigation use. Contract executed May 27, 2005.

Lower Colorado region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8081.

New contract action:

43. Mohave County Water Authority, BCP, Arizona: Amend contract No. 04–XX–30–W0431 to provide for a change in type and place of use.

Modified contract actions:

3. Ogram Boys Enterprises, Inc., BCP, Arizona: Colorado River water delivery contract for 924 acre-feet of Colorado River water per year as recommended by the Arizona Department of Water Resources.

5. Miscellaneous PPR No. 11, BCP, Arizona: Assign PPR from Holpal to First American Title Insurance Agency of Mohave, Inc.

Completed contract actions:

3. Ogram Boys Enterprises, Inc., BCP, Arizona: Colorado River water delivery contract for 924 acre-feet of Colorado River water per year as recommended by the Arizona Department of Water Resources.

5. Miscellaneous PPR No. 11, BCP, Arizona: Assign PPR from Holpal to First American Title Insurance Agency of Mohave, Inc.

35. Yuma County Water Users Association, BCP, Arizona: Supplemental contract for the O&M of the Yuma Project, Valley Division.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

New contract actions:

1.(g) National Park Service, Aspinall Storage Unit, CRSP: The National Park Service has requested a 40-year water service contract for 3 acre-feet of water out of Blue Mesa Reservoir.

1.(h) Joseph Foran, Aspinall Storage Unit, CRSP: Mr. Foran has requested a 40-year water service contract for 25 acre-feet of water out of Blue Mesa Reservoir. Mr. Foran has submitted an augmentation plan to Water District 4, case number pending.

32. San Juan-Chama Project, Albuquerque Area Office: Proposed conversion of six water service contracts to repayment contracts. Contractors requesting such conversions are the City of Santa Fe, County of Santa Fe, County of Los Alamos, City of Espanola, Town of Taos, Village of Taos Ski Valley, and Town of Los Lunas.

33. West Divide Water Conservancy District: The West Divide Water Conservancy District and the Silt Water Conservancy District have requested a nonproject irrigation carriage contract (40-year) to have 2 cfs of their direct flow irrigation water rights diverted into and delivered through, existing Silt pump canal, a feature of the Silt Project delivery structures.

Modified contract action:

2. San Juan-Chama Project, New Mexico: The United States is holding the remaining 2,990 acre-feet of project water for potential use in Indian water rights settlements in New Mexico.

Completed contract actions:

1.(d) United Companies, Aspinall Storage Unit, CRSP: United Companies has requested 22.0 acre-feet of M&I water out of Blue Mesa Reservoir for four gravel pits. Contract executed June 8, 2005.

1.(e) Downy Excavating, Inc., Aspinall Storage Unit, CRSP: Downy Excavating, Inc., has requested a 40-year water service contract for 2 acre-feet of water out of Blue Mesa Reservoir. Downy Excavation has submitted their augmentation plan to Water District 4, Case No. 97CW49. Contract executed July 12, 2005.

1.(f) Bowie Resources, LLC, Aspinall Storage Unit, CRSP: Bowie Resources, LLC has requested a 40-year water service contract for 105 acre-feet of water out of Blue Mesa Reservoir. Bowie Resources has submitted their augmentation plan to Water District 4, Case No. 02CW77. Contract executed July 8, 2005.

Great Plains Region: Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7752.

New contract actions:

58. Individual developer in the Angostura Unit, P–SMBP, South Dakota: Negotiate M&I water service contract with developer for up to ten, 10-acre tracts of land within Angostura ID.

59. Nancy Ray, Lower Marias Unit, P–SMBP, Montana: Initiating a long-term contract for up to 144 acre-feet of storage water from Tiber Reservoir to irrigate 72 acres. The current contract expires December 31, 2005.

Modified contract actions:

20. Glendo Unit, P–SMBP, Wyoming: Amendments to long-term water service contracts with Burbank Ditch, New Grattan Ditch Company, Torrington ID, Lucerne Canal and Power Company, and Wright and Murphy Ditch Company.

21. Glendo Unit, P–SMBP, Nebraska: Amendments to long-term water service contracts with Bridgeport, Enterprise, and Mitchell IDs, and Central Nebraska Public Power and ID.

25. Clark Canyon Water Supply Company, East Bench Unit, P–SMBP, Montana: Initiating renewal of contract No. 14–06–600–3592 which expires December 31, 2005. Current contract may be amended to extend the term not to exceed an additional 2 years pursuant to Section 208 of the 2005 Consolidated Appropriations Act if necessary and agreed to by both parties.

26. East Bench ID, East Bench Unit, P–SMBP, Montana: Initiating renewal of contract No. 14–06–600–3593 which expires December 31, 2005. Current contract may be amended to extend the term not to exceed an additional 2 years pursuant to Section 208 of the 2005 Consolidated Appropriations Act if necessary and agreed to by both parties.

Discontinued contract actions:

47. East Bench ID, East Bench Unit, P–SMBP, Montana: The district requested a deferment of its 2005 construction obligation. A request was prepared to amend Contract No. 14–06–600–3593 to defer payments in accordance with the Act of September 21, 1959. The district withdrew this deferment request on July 26, 2005. No further action is necessary.

49. Frenchman Valley ID; Frenchman Unit, Frenchman-Cambridge Division, P–SMBP; Culbertson, Nebraska: The district requested a deferment of its 2005 construction obligation in accordance with the Act of September 21, 1959. Reclamation denied this deferment request. No further action is necessary.

Completed contract action:

45. Belle Fourche ID, Belle Fourche Project, P–SMBP, South Dakota: Temporary contract for a supplemental water supply from Keyhole Reservoir.

Dated: October 7, 2005.

Roseann Gonzales,

Director, Office of Program and Policy Services.

[FR Doc. 05–21695 Filed 11–1–05; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collections; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Making Officer Redeployment Effective (MORE) Closeout Report.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed extension of an information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until January 3, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebekah Dorr, Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Making Officer Redeployment Effective (MORE) Closeout Report.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law enforcement agencies that are recipients of MORE grants. This information collection solicits information from MORE grantees on grant implementation for final grant closure.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 1,045 respondents annually will complete the form within two hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,090 annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: October 27, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–21779 Filed 11–1–05; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

Notice is hereby given that on October 17, 2005, a proposed Consent Decree in *United States and State of Texas* v. *BP AMOCO Chemical Company, et al.,* Civil Action No. 4:05–cv–03547, was lodged with the United States District Court for the Southern District of Texas.

In this action the United States and the State of Texas (''State'') sought natural resource damages as a result of the release of hazardous substances

from the Brio Refining, Inc. (''Brio'') Superfund Site and the Dixie Oil Processors (''Dixie'' or ''DOP'') Superfund Site pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''). The Brio and DOP Superfund Sites are located near the Town of Friendswood in Harris County, Texas.

Under the Consent Decree, BP AMOCO Chemical Co., Atlantic Richfield Co., Allied Waste industries, Chevron Chemical Co., Total Petrochemicals USA, Inc., GE Petrochemicals, Inc., CNA Holdings, Inc., Huntsman Corp., Pharmacia Corp., Union Carbide Corp., The Dow Chemical Co., Merichem Co., Rohm and Haas Co., and Lyondell Chemical Co. (''Defendants'') will undertake (1) the preservation of at least 100 acres of bottomland hardwood forest habitat, including at least 30 acres in the 100-year flood plain along Mud Gully and Clear creek, (2) the re-colonization of 19 acres of former pasture with native vegetation, and (3) the creation of six acres of riparian wetland in the vicinity of the Superfund Sites. The companies also will pay the State and federal trustees approximately $347,000 in past assessment costs and estimated future restoration costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *BP AMOCO Chemical Company. et al.,* D.J. Ref. No. 90–11–2–325/1.

The Consent Decree may be examined during the public comment period on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washing, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a complete copy of the consent Decree from the Consent Decree Library, please enclose a check in the amount of $37.25 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy of the Consent Decree, exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $12.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas A. Mariani,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–21881 Filed 11–1–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

Notice is hereby given that on October 18, 2005, a proposed Consent Decree in *United States* v. *Chemical Waste Management, Inc.,* an action under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), amended, 42 U.S.C. 9607, was lodged with the United States District Court for the District of Colorado, Case No. 05–CV–02053 ZLW–MJW (D. Colo.).

In this action, the United States sought the recovery of past response costs incurred by the United States in connection with removal actions implemented in 1999 by the Environmental Protection Agency at the Weld County Waste Disposal Site (''Site''), Weld County, Colorado. In its complaint, the United States alleged that Chemical Waste Management, Inc., by virtue of its status as a successor to the liabilities of Waste Transport, Inc., is liable under section 107(a)(4) of CERCLA, 42 U.S.C. 9607(a)(4), as a person ''who * * * accepted any hazardous substances for transport to disposal * * * facilities * * * selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs.''

The settlement between the United States and Chemical Waste Management, Inc. provides for the recovery of $1,025,442 in past costs incurred by EPA in connection with removal actions implemented in 1999 at the Site and reserves any claims that the United States may have against Chemical Waste Management, Inc., for, among other things, future response costs and natural resource damages.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, PO Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Chemical Waste Management, Inc.,* DJ# 90–7–1–831/2.

The Consent Decree may be examined at U.S. EPA Region 8, 999 18th Street, Suite 500, Denver, Colorado, 80202. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, Please enclose a check in the amount of $3.00 for the Decree payable to the United States Treasury.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–21884 Filed 11–1–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act and Oil Pollution Act

Notice is hereby given that on October 13, 2005, a proposed Consent Decree (''Decree'') in *United States* v. *Kentucky Utilities Co.,* Civil Action No. 5:05–cv–418, was lodged with the United States District Court for the Eastern District of Kentucky.

In this action, the United States sought the assessment of penalties under the Clean Water Act, as amended by the Oil Pollution Act of 1990, due to the discharge in 1999 of approximately 38,000 gallons of diesel fuel oil from an underground pipeline owned and operated by Defendants and located at the E.W. Brown Generating Station in Burgin, Kentucky (''Brown Station''). The United States also sought the assessment of penalties for the 2001 discharge of an unknown quantity of oil from a cooling tower at the Brown Station, and for Defendant's failure to timely submit a Brown Station Facilities Response Plan (''FRP''). The Decree provides for Defendants to pay a civil penalty in the amount of $228,569, and to install two additional oil-water separators at the Brown Station. This Supplemental Environmental Project will cost at least $750,000 to install, and

an additional $400,000 to maintain over the next ten (10) years.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Kentucky Utilities Co.,* DJ #90–5–1–1–07915.

The Decree may be examined at the Office of the United States Attorney, 110 West Vine Street, Room 400, Lexington, Kentucky 40507, and at U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $39.75 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy exclusive of exhibits, please enclose a check in the amount of $10.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–21882 Filed 11–1–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Solid Waste Disposal Act

Notice is hereby given that the following proposed consent decrees relating to the Baldwin Park Operable Unit of the San Gabriel Valley Superfund Sites, Areas 1–4, located in and near the cities of Azusa, Irwindale, Baldwin Park, and Covina in Los Angeles County, California (''BPOU''), were lodged on October 26, 2005, with the United States District Court for the Central District of California: (1) *United States and California Department of Toxic Substances Control (''DTSC'')* v. *Lockheed Martin Corporation, et al.*, Case No. CV05–7519 GPS (AJWx) (C.D. Cal.), (2) *United States and DTSC* v. *Leach International Corporation*, Case No. CV05–7515 CAS (Ex) (C.D. Cal.), (3) *United States and DTSC* v. *Allegiance Healthcare Corporation, et al.*, Case No. CV05–7520 DSF (JWJX) (C.D. Cal.), (4) *United States* v. *Phaostron Instrument and Electronic Company*, Case No. CV05–7522 JFW (SSx) (C.D. Cal.), (5) *United States* v. *Azusa Land Reclamation Co., Inc., et al.*, Case No. CV05–7518 MMM (JTLx) (C.D. Cal.), (6) *United States* v. *Aerojet-General Corporation, et al.*, Case No. CV05–7516 PA (JWJx) (C.D. Cal.), and (7) *United States and DTSC* v. *White & White Properties, et al.*, Case No. CV05–7521 GHK (PLAx) (C.D. Cal.).

The first four consent decrees listed above represent a settlement of claims brought against Lockheed Martin Corporation, Mobil Oil Corporation, The Valspar Corporation, Leach International Corporation, Allegiance Healthcare Corporation, Philip Morris USA Inc., and Phaostron Instrument and Electronic Company pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601–9675, and section 7003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (collectively ''RCRA''), 42 U.S.C. 6973. In the complaints filed on October 19, 2005, the United States and DTSC sought injunctive relief for performance of response actions under CERCLA section 106, 42 U.S.C. 9606, and RCRA section 7003, 42 U.S.C. 6973, and reimbursement for response costs under CERCLA section 107, 42 U.S.C. 9607, incurred by the United States Environmental Protection Agency (''EPA''), the United States Department of Justice (''DOJ''), and DTSC, in response to releases of hazardous substances at the BPOU. The last three consent decrees listed above represent a settlement of claims brought pursuant to CERCLA against Aerojet-General Corporation, GenCorp, Inc., Azusa Land Reclamation Co., Inc., Fairchild Holding Corp., Hartwell Corporation, Oil & Solvent Process Company, Reichhold, Inc., Winco Enterprises Inc., and entities related to White & White Properties. In the complaints filed on October 19, 2005, the United States and DTSC sought reimbursement for response costs under CERCLA section 107, 42 U.S.C. 9607, incurred by EPA, DOJ, and DTSC, in response to releases of hazardous substances at the BPOU.

The proposed consent decrees require the Settling Defendants to pay $14,328,388 to the United States for response costs incurred by EPA and DOJ and 88 percent of the United States' future oversight costs, and to pay $292,105 to DTSC for response costs incurred by DTSC. The first four proposed consent decrees include a covenant-not-to-sue under sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, and under section 7003 of RCRA, 42 U.S.C. 6973. The last three proposed consent decrees include a covenant-not-to-sue under CERCLA section 107, 42 U.S.C. 9607.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, with a copy to Robert Mullaney, U.S. Department of Justice, 301 Howard Street, Suite 1050, San Francisco, CA 94105, and should refer to the BPOU Consent Decrees, D.J. Ref. #90–11–2–354. For the settlements involving RCRA, commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The consent decrees may be examined at U.S. EPA Region 9, Office of Regional Counsel, 75 Hawthorne Street, San Francisco, California. During the public comment period, the consent decrees may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decrees may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $662.25 (25 cents per page reproduction cost) payable to the U.S. Treasury. (A copy of the decrees, exclusive of

attachments, may be obtained for $53.00.)

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 05–21880 Filed 11–1–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 17, 2005, a proposed Consent Decree (''Decree'') in *United States* v. *Lucite International, Inc.*, Civil Action No. 05–2773 Ma V, was lodged with the United States District Court for the Western District of Tennessee.

In this action, the United States sought penalties and injunctive relief from Defendant with respect to Clean Air Act violations at its methyl methacrylate and acrylic sheeting facility on Fite Road in Memphis, Tennessee. The Complaint against Defendant alleges violations of following provisions: New Source Performance Standards (NSPS) applicable to Sulfuric Acid Plants, at 40 CFR Part 60, Subpart H; National Emissions Standards for Hazardous Air Pollutants at 40 CFR Part 63, Subparts A, F and G; and Protection of Stratospheric Ozone under Section 608 of the Act, as implemented by regulations at 40 CFR Part 82, Subpart F. The Complaint further alleges that many of these violations resulted in corresponding violations of Defendant's Title V Permit and of Tennessee's State Implementation Plan. The Decree resolves the claims alleged in the Complaint and requires Defendant to pay $1.8 million plus interest in civil penalties, and to install NSPS compliant controls at an estimated cost of approximately $16 million. In addition, the Decree provides for implementation of a Supplemental Environmental Project valued at $1.3 million, to reroute emissions from two sources, resulting in the reduction of emissions from those sources to a level that is only 10% of previously permitted emissions.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Lucite International, Inc.*, D.J. Ref. 90–5–2–1–08272.

The Decree may be examined at the Office of the United States Attorney, 167 North Main St., Suite 800, Memphis, Tennessee 38013, and at U.S. EPA Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $13.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–21886 Filed 11–1–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to CERCLA

Notice is hereby given that on October 17, 2005, the United States lodged a proposed Consent Decree between the United States, the State of Arkansas, the Signature Combs plaintiffs, and Oakley-Keesee Ford, Inc. (''Oakley-Keesee'') with the United States District Court for the Eastern District of Arkansas in *United States et al.* v. *Oakley-Keesee Ford,* Nos. 3:98CV00362, 3:98CV00363, consolidated with *Signature Comb, Inc. et al.* v. *Oakley-Keesee Ford,* No. 3:02CV00125 (SMR).

The proposed Consent Decree resolves the claims of the United States, the State of Arkansas, and the Signature Combs plaintiffs against Oakley-Keesee under sections 106(b) and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, (''CERCLA''), 42 U.S.C. 9606, 9607, regarding the Gurley Pit and South 8th Street Superfund Sites located in Crittenden County, Arkansas. Under the proposed decree, Oakley-Keesee has agreed to pay the plaintiffs $260,000 within 30 days of the effective date of the Consent Decree as follows: (1) $150,000 will be paid to the Superfund in partial reimbursement of the United States' past and future response costs at the Sites; (2) $100,000 will be paid to the superfund in penalties for the defendant's failure to comply with the Unilateral Administrative Order to perform the remedial action at the South 8th Street Site; and (3) $10,000 will be paid to the State in partial reimbursement of State's past and future response costs at the Sites. Oakley-Keesee also has agreed to pay the Signature Combs plaintiffs $300,000 in partial reimbursement of response costs expended by the Signature Combs plaintiffs related to the Sites.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, PO Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States et al.* v. *Oakley-Keesee Ford,* DJ No. 90–11–2–196/2.

The proposed Consent Decree may be examined during the public comment period on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Dated: October 19, 2005.

Thomas A. Mariani, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–21883 Filed 11–1–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on October 19, 2005, a proposed consent decree in *United States* v. *Seven-Up/RC Bottling Company of Southern California, Inc.*, Case No. CV–05–7514 AHM (CTx), was lodged with the United States District Court for the Central District of Columbia.

In this action, the United States sought injunctive relief and civil penalties under section 309 of the Clean Water Act (''CWA'') against Seven-Up/RC Bottling Company of Southern California, Inc. (''Seven-Up'') at its soft drink bottling facilities in Vernon and Buena Park, California, for: Unauthorized discharges of pollutants, including industrial wastes and storm water associated with industrial activity, into waters of the United States; violations of the terms and conditions of storm water permits; and violations of federal pretreatment standards. The consent decree requires Seven-Up to: (1) Implement a comprehensive pH compliance plan at the Buena Park facility, including putting in place a new treatment system, a new monitoring protocol, and an employee training program; (2) implement a storm water control plan to manage the industrial pollutants generated by the Vernon facility's outdoor activities; (3) implement a storm water inspection and response program for both bottling facilities; and (4) pay a civil penalty of $428,500.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, with a copy to Robert Mullaney, U.S. Department of Justice, 301 Howard Street, Suite 1050, San Francisco, CA 94105, and should refer to *United States* v. *Seven-Up/RC Bottling Company of Southern California, Inc.*, D.J. Ref. #90–5–1–1–08191.

The consent decree may be examined at U.S. EPA Region 9, Office of Regional Counsel, 75 Hawthorne Street, San Francisco, California. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $9.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–21885 Filed 11–1–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Federal Coal Lease Reserves.

The Department of Justice (DOJ), Antitrust Division (ATR), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 3, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments (especially regarding the estimated public burden or associated response time), suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jill Ptacek, Antitrust Division, United States Department of Justice, 325 7th Street, NW., Suite 500, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Federal Coal Lease Reserves.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Numbers: ATR–139 and ATR–140, Antitrust Division, Department of Justice.

Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for Profit. *Other:* None. The Department of Justice evaluates the competitive impact of issuances, transfers and exchanges of federal coal leases. These forms seek information regarding a prospective coal lessee's existing coal reserves. The Department uses this information to determine whether the issuance, transfer or exchange of the federal coal lease is consistent with the antitrust laws.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 20 respondents will complete each form, with each response taking approximately two hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 40 annual burden hours associated with this collection, in total.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 27, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–21778 Filed 11–1–05; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 26, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: New collection of information.

Title: CPS Disability Questions Test.

OMB Number: 1220–0NEW.

Frequency: One time.

Type of Response: Reporting.

Affected Public: Individuals or households.

Number of Respondents: 21,000.

Number of Annual Responses: 21,000.

Estimated Time Per Response: 2 minutes.

Total Burden Hours: 700.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Current Population Survey (CPS) Disability Questions Test will gather information on the disability status of CPS respondents. The BLS will use the data to assess the effectiveness of new questions designed to identify persons with disabilities within the context of the CPS. Additionally, the BLS will be able to evaluate the effect that adding these questions to the CPS on a monthly basis will have on that survey's response rates. Other groups who may find these data to be of interest include veterans groups, educational associations, and disability advocacy groups.

Because the Disability Questions Test is part of the CPS, the same detailed demographic information collected in the CPS will be available on respondents to the Test. Data concerning disabled persons will be possible across characteristics such as sex, race, age, and educational attainment of the respondent.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–21841 Filed 11–1–05; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 26, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of currently approved collection.

Title: Furnishing Documents to the Secretary of Labor on Request under ERISA section104(a)(6).

OMB Number: 1210–0112.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Business or other for-profit; Individuals or households; and Not-for-profit institutions.

Number of Respondents: 500.

Number of Annual Responses: 500.

Estimated Time Per Response: 5 minutes for timely paper submissions; 2 minutes for electronic submission; and 30 minutes for untimely submissions.

Total Burden Hours: 44.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $1,800.

Description: The Taxpayer Relief Act of 1997 (TRA 97) eliminated the Employee Retirement Security Act of 1974 (ERISA) requirement that employee benefit plan administrators file with the Department copies of the summary plan descriptions and summaries of material modifications that are required to be furnished to plan participants and beneficiaries. TRA 97 added paragraph (6) to section 104(a) of ERISA which provides that the administrator of any employee benefit plan subject to Part 1 of Title I of ERISA is required to furnish to the Secretary of Labor, on request, any documents related to the employee benefit plan. Prior to the TRA 97 amendments, ERISA provided that certain documents be filed with the Department of Labor to ensure that plan participants and

beneficiaries would have a means to obtain the documents without requesting them from the plan administrator. The new section 104(a)(6) authorizes the Department to request these documents on behalf of plan participants and beneficiaries.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–21842 Filed 11–1–05; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 31, 2005.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Permit-Required Confined Spaces (29 CFR 1910.146).

OMB Number: 1218–0203.

Frequency: On occasion.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

Number of Respondents: 238,853.

Number of Annual Responses: 9,124,977.

Estimated Time Per Response: Varies from 1 minute to maintain a certificate to 16 hours to develop a written permit space entry program.

Total Burden Hours: 1,523,763.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $.

Description: 29 CFR 1910.146 specifies a number of collections of information requirements. The collections of information are used by employers and employees whenever entry is made into permit-required confined spaces. The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of the information is to ensure that employers systematically evaluate the dangers in permit spaces before entry is attempted and to ensure that adequate measures are taken to make the spaces safe for entry. In addition, the information is needed to determine, during an OSHA inspection by a compliance safety and health officer, if employers are in compliance with the Standard.

Section 1910.146(c)(2) requires the employer to post danger signs to inform exposed employees of the existence and location of, and the danger posed by, permit spaces.

Section 1910.146(c)(4) requires the employer to develop and implement a written ''permit space program'' if the employer decides that its employees will enter permit spaces. The written program is to be made available for inspection by employees and their authorized representatives. Section 1910.146(d) provides the employer with the requirements of a permit-required confined space program (''permit space program'') required under this paragraph.

Section 1910.146(c)(5)(i)(E) requires that the determinations and supporting data specified by paragraphs (c)(5)(i)(A), (c)(5)(i)(B), and (c)(5)(i)(C) of this section are documented by the employer and are made available to each employee who enters a permit space or to that employee's authorized representative.

Under paragraph (c)(5)(ii)(H) of § 1910.146, the employer is required to verify that the space is safe for entry and that the pre-entry measures required by paragraph (c)(5)(ii) of this section have been taken, using a written certification that contains the date, the location of the space, and the signature of the person providing the certification. The certification is to be made before entry and is required to be made available to each employee entering the space or to that employee's authorized representative.

Section 1910.146(c)(7)(iii) requires the employer to document the basis for determining that all hazards in a permit space have been eliminated using a certification that contains the date, the location of the space, and the signature of the person making the determination. The certification is to be made available to each employee entering the space or to that employee's authorized representative.

Section 1910.146(c)(8)(i) requires that the employer inform the contractor that the workplace contains permit spaces and that permit space entry is allowed only through compliance with a permit space program meeting the requirements of this section. Section 1910.146(c)(8)(ii) requires that the employer apprise the contractor of the elements, including the hazards identified and the host employer's experience with the space, that make the space in question a permit space. Section 1910.146(c)(8)(iii) requires that the employer apprise the contractor of any precautions or procedures that the host employer has implemented for the protection of employees in or near permit spaces where contractor personnel will be working. Section 1910.146(c)(8)(v) requires the employer to debrief the contractor at the conclusion of the entry operations regarding the permit space program followed and regarding any hazards confronted or created in permit spaces during entry operations.[1]

Section 1910.146(c)(9)(iii) requires that the contractor inform the host employer of the permit space program

[1] These sections identify usual and customary communications between employers, contractors, and employees; therefore, they do not impose burden hours or costs on the employer. For example, as a matter of business practice, information about hazards and permit-required confined spaces, etc., would be conveyed to contractors during initial discussions of work to be performed.

that the contractor will follow and of any hazards confronted or created in permit spaces, either through a debriefing or during the entry operation.[2]

Section 1910.146(d)(5)(vi) requires the employer to immediately provide each authorized entrant or that employee's authorized representative with the results of any testing conducted in accordance with paragraph (d) of this section.[3]

Section 1910.146(e)(1) requires the employer to document the completion of measures required by paragraph (d)(3) by preparing an entry permit before employee entry is authorized. Paragraph (f) of § 1910.146 specifies the information to be included on the entry permit. Paragraph (e)(3) requires that the employer make the completed permit available at the time of entry to all authorized entrants by posting the permit at the entry portal or by any other equally effective means, so that the entrants can confirm that pre-entry preparations have been completed. Paragraph (e)(6) requires the employer to retain each canceled entry permit for at least one year.

Section 1910.146(g)(4) requires that the employer certify that the training required by paragraphs (g)(1) through (g)(3)[4] has been accomplished by preparing a written certification record.

Section 1910.146(k)(1)(iv) requires that the employer inform each rescue team or service of the hazards they may confront when called on to perform rescue at the site.

Section 1910.146(k)(2)(ii) requires that the employer train affected employees to perform assigned rescue duties. The employer must ensure that such employees successfully complete the training required to establish proficiency as an authorized entrant, as provided by paragraphs (g) and (h) of this section. Section 1910.146(k)(2)(iii) requires that the employer train affected employees in basic first-aid and cardiopulmonary resuscitation (CPR). The employer shall ensure that at least one member of the rescue team or service holding a current certification in first aid and CPR is available.

Section 1910.146(k)(4) requires that if an injured entrant is exposed to a substance for which a Material Safety Data Sheet (MSDS) or other similar written information is required to be kept at the worksite, that the employer make the MSDS or written information available to the medical facility treating the exposed entrant.[5]

Section 1910.146(l)(2) requires that employers make all information required to be developed by this section available to affected employees and their authorized representatives.[6]

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Vehicle-Mounted Elevating and Rotating Work Platforms (Aerial Lifts) (29 CFR 1910.67).

OMB Number: 1218–0230.

Frequency: On occasion.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

Number of Respondents: 1,000.

Number of Annual Responses: 1,014.

Estimated Time Per Response: Varies from 1 minute to maintain the manufacturer's certification record to 2 minutes to disclose it to an OSHA Compliance Officer.

Total Burden Hours: 21.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: OSHA's Vehicle-Mounted Elevating and Rotating Work Platforms Standard (29 CFR 1910.67) (the ''Standard'') specifies one paperwork requirement.

Manufacturer's Certification of Modification (paragraph (b)(2)). The Standard requires that when aerial lifts are ''field modified'' for uses other than those intended by the manufacturer, the manufacturer or other equivalent entity, such as a nationally recognized testing laboratory, must certify in writing that the modification is in conformity with all applicable provisions of ANSI A92.2–1969 and the OSHA Standard and that the modified aerial lift is at least as safe as the equipment was before modification. Employers are to maintain the certification record and make it available to OSHA compliance officers. This record provides assurance to employers, employees, and compliance officers that the aerial lift is safe for use, thereby preventing failure while employees are being elevated. The certification record also provides the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–21843 Filed 11–1–05; 8:45 am]

BILLING CODE 4510–26–P

[2] See footnote 1.

[3] See footnote 1.

[4] The Agency concludes that the training required under § 1910.146(g)(1) through (g)(3) and (k)(2)(ii) and (k)(2)(iii) § 1910.146(k) is written in performance-oriented language and, thus, not considered a collection of information under the implementing rules and guidelines of PRA–95.

[5] The burden hours and cost for MSDS accessibility is taken under OMB Control Number 1218–0072 (the Hazard Communication Standard (HCS) ICR).

[6] See footnote 1.

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Kennecott Energy Company

[Docket No. M–2005–071–C]

Kennecott Energy Company, 748 T–7 Road (82718), P.O. Box 1449, Gillette, Wyoming 82717–1449 has filed a petition to modify the application of 30 CFR 77.803 (Fail safe ground check circuits on high-voltage resistance grounded systems) to its Cordero-Rojo Mine (MSHA I.D. No. 48–00992), Jacobs Ranch Mine (MSHA I.D. No. 48–00997) located in Campbell County, Wyoming; Antelope Mine (MSHA I.D. No. 48–01337) located in Converse County, Wyoming; Spring Creek Mine (I.D. No. 24–01457) located in Bighorn County, Montana; and Colowyo Coal Mine (MSHA I.D. No. 05–02962) located in Moffat County, Colorado. The petitioner requests a modification of the existing standard to permit an alternative method of compliance when the boom/mast is raised or lowered during necessary repairs. The petitioner has listed specific procedures in this petition that will be followed when the alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via E-mail: *zzMSHA-Comments@dol.gov*; Fax: (202) 693–9441; or Regular Mail/Hand Delivery/Courier: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before December 2, 2005. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 27th day of October 2005.

Rebecca J. Smith,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 05–21847 Filed 11–1–05; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before December 19, 2005. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means (Note the new address for requesting schedules using e-mail):

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: *requestschedule@nara.gov.*

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Acting Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending (Note the New Address for Requesting Schedules Using E-Mail)

1. Department of Defense, Office of the Inspector General (N1–509–05–1, 7 items, 5 temporary items). Records of the Defense Criminal Investigative Service relating to sources of information for criminal investigations. Included are agreements, fingerprints, polygraphs, status reports, payment information, and general correspondence. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of policy files and source files established in conjunction with investigative case files approved for permanent retention.

2. Department of Defense, Defense Threat Reduction Agency (N1–374–03–1, 15 items, 9 temporary items). Audiovisual work orders, unedited silent explosion phenomenology and effects, routine and non-mission related photographic material, duplicate training materials, routine briefings and presentations, and indexes to records proposed for disposal. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of technical films of U.S. and foreign nuclear test events, master copies of agency training materials, important briefings and presentations, audiovisual news releases and indexes to historic audiovisual materials.

3. Department of Defense, Defense Threat Reduction Agency (N1–374–05–3, 2 items, 1 temporary item). Electronic copies of records created using electronic mail and word processing that pertain to an electronic catalog of scientific and technical information. The recordkeeping copy of the catalog is proposed for permanent retention.

4. Department of Defense, Defense Threat Reduction Agency (N1–374–05–4, 2 items, 1 temporary item). Electronic copies of records created using electronic mail and word processing that pertain to an electronic imaging system of scientific and technical information. Proposed for permanent retention are the recordkeeping copies of the electronic images and technical documentation of nuclear weapons effects testing and weapons testing.

5. Department of Defense, Defense Threat Reduction Agency (N1–374–05–5, 2 items, 2 temporary items). Records relating to testing the effects of radiation on parts manufactured for spacecraft and satellites. Also included are electronic copies of records created using electronic mail and word processing.

6. Department of Defense, National Security Agency/Central Security Service (N1–457–05–3, 5 items, 5 temporary items). Case files relating to psychological evaluations. This schedule authorizes the agency to apply the proposed disposition instruction to any recordkeeping medium.

7. Department of Defense, National Security Agency/Central Security Service (N1–457–05–4, 1 item, 1 temporary item). Public key infrastructure certificates of acceptance and acknowledgement of responsibilities.

8. Department of Homeland Security, U.S. Coast Guard (N1–26–05–2, 3 items, 3 temporary items). Records of the Great Lakes Pilotage Program relating to pilot personnel files. Included are such records as application forms, fingerprinting and background documentation, photographs, reports of medical examination, violations and incident reports, correspondence, and certificates of registration. Also included are electronic copies of records created using electronic mail and word processing.

9. Department of Homeland Security, U.S. Coast Guard (N1–26–05–5, 3 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that pertain to high level correspondence. Proposed for permanent retention are recordkeeping copies of this correspondence involving commanding officers and high level or high profile events.

10. Department of Homeland Security, U.S. Coast Guard (N1–26–05–19, 4 items, 3 temporary items). Case files pertaining to the development, operation, and repair of aids to navigation classified as minor aids, such as buoys. Included are such records as establishment files and authorizations, damage and repair reports, location charts, photographs, structural drawings, and correspondence. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of case files for major aids to navigation, such as lighthouses.

11. Department of the Interior, U.S. Fish and Wildlife Service, (N1–22–05–1, 262 items, 212 temporary items). A comprehensive schedule covering 21 agency functions, including administration, Alaska, archaeology, audits, conservation, technical assistance, endangered species, enforcement, environmental contaminants, facilities, fiscal matters, grants, litigation, permits, personnel, policy and legislation, program management, publications and public relations, realty, research, and safety. Included are such records as routine policy and procedures files, working papers, background and reference materials, archaeological permit files, audit case files, complaint files and violation logs, conservation agreements and easements, endangered species consultation files, critical habitat case files, biological and habitat assessments, technical assistance files, special operations case files, engineering drawings and specifications, work orders, administrative records, permit files, duck stamp contest agreements, public relations project files, escrow files, acquisition and disposal files, land status determinations, land and mineral case files, fish and wildlife surveys, and electronic tracking systems. Also included are records created using electronic mail and word processing applications. Proposed for permanent retention are recordkeeping copies of briefing statements, substantive policy documents, Alaska subsistence fisheries and hunting case files, Federal regional advisory council records, archaeological resource inventory and information files, conservation and restoration plans, endangered and threatened species files, historical project and grant product files, tagging certificates, historical project and property maps, mission-related motion pictures and recordings, photographs, news releases, publications, high-level speeches, and wilderness studies.

12. Department of Transportation, Federal Aviation Administration (N1–237–02–3, 3 items, 2 temporary items). Aeronautical charting products and the records used to compile them. Proposed for permanent retention are recordkeeping copies of unique aeronautical charts, including visual navigation charts, instrument navigation charts, and supplementary publications. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

13. Department of the Treasury, Internal Revenue Service (N1–58–05–9, 2 items, 2 temporary items). Completed and incomplete applications for enrollment in the Health Coverage Tax Credit Program.

14. Department of the Treasury, Internal Revenue Service (N1–58–05–10, 8 items, 8 temporary items). Records relating to the granting and administration of personnel security clearances. Also included are electronic copies of records created using electronic mail and word processing.

15. Department of the Treasury, Office of the Comptroller of the Currency (N1–101–05–1, 66 items, 47 temporary items). A comprehensive schedule that includes official files of a routine or administrative nature, working files, transitory files, schedules of daily activities of senior staff and other employees, corporate licensing files and records of supervisory activities associated with active banks, litigation and enforcement case files, annual oaths of national bank directors, consumer files, criminal referral forms, collective investment fund files, country exposure reports, municipal securities dealer applications, delegation of authority files, agency office lease files, routine training materials, and general files relating to the Uniform Commission Examination. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of official agency policy and program files, precedential opinion files, the Comptroller of the Currency's schedule of daily activities, corporate history files, special case files, inactive bank case files, administrative hearing files, securities disclosure filings made under 12 CFR Part 11, closing banks, publications, agency-developed training materials for bank examiners, and Uniform Commission Examinations. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

16. Armed Forces Retirement Home, Agency-wide (N1–231–05–1, 121 items, 116 temporary items). Records relating to mission and organization, program and services, and administration and management. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of legislation case files, Congressional testimonies, and museum exhibit planning, lending, and educational materials files. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

17. Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, Agency-wide (N1–508–05–1, 39 items, 20 temporary items). Records include administrative and reference files of advisory

committees, compliance reports, routine correspondence and subject files, recipient files and non-winner applications for education awards, routine photographs, project contract files, member and non-member applications, referral case files, project evaluation development records and tracking databases. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of executive leadership files, including board of trustees meeting minutes, program and policy reports, high level correspondence, subject files, organizational records of advisory committees, executive management team files, records of the legal counsel, publications, speeches, news releases, and video recordings. Also proposed for permanent retention are recordkeeping copies of photographs at official events, subject files of the education program, correspondence and subject files of the director of the United States Institute for Environmental Conflict Resolution, project case files, records relating to roster development for the National Roster of the Environmental Dispute Resolution and Consensus Building Professionals, and evaluation reports.

18. National Archives and Records Administration, Office of Regional Records Services (N1–64–05–9, 6 items, 6 temporary items). Inputs, master files, documentation, and electronic mail and word processing copies associated with an electronic information system used to collect data and bill agencies for the storage and servicing of records at federal records centers.

19. Small Business Administration (N1–309–05–16, 8 items, 8 temporary items). Inputs, outputs, master files, backups, documentation, and electronic mail and word processing copies associated with an electronic system used by the Office of Capital Access to capture and track information on small business investment companies.

20. Tennessee Valley Authority, Fossil Power Group (N1–142–04–9, 4 items, 4 temporary items). Forms used to set relays and other protective devices at fossil power plants. Also included are electronic copies of records created using electronic mail and word processing.

21. Tennessee Valley Authority, TVA Nuclear (N1–142–05–3, 3 items, 3 temporary items). Electronic copies of records created using electronic mail and word processing that are associated with nuclear power recorder charts. This schedule reduces the retention period for recordkeeping copies of these files, which were previously approved for disposal, as the same information is retained in quality assurance records for 75 years. This schedule also extends the retention period for recordkeeping copies of nuclear power plant work orders, which were previously approved for disposal.

Dated: October 18, 2005.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 05–21810 Filed 11–1–05; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Public Scoping Meeting and Solicitation of Scoping Comments Related to the Standard Review Plan for Waste Determination Reviews

AGENCY: United States Nuclear Regulatory Commission (NRC).

ACTION: Notice; Scoping meeting and opportunity to comment.

SUMMARY: The NRC announces its intent to conduct a public scoping meeting to present an overview of the proposed outline for the Standard Review Plan (SRP) for Waste Determination Reviews and to accept oral and written public comments. The meeting date, time and location are listed below:

Meeting Date: Thursday, November 10, 2005.

Meeting Location: Hilton Gaithersburg, 620 Perry Parkway, Gaithersburg, Maryland 20877, 301–977–8900, *http://www.hilton.com/en/hi/hotels/index.jhtml;jsessionid=LMCCLDIIWRZ1KCSGBIX2VCQKIYFCXUUC?ctyhocn=GAIGHHF.*

SRP Meeting Agenda:

12:30 p.m.–1 p.m. Meeting Registration
1:00 p.m.–1:15 p.m. Welcome & Introductory Remarks
1:15 p.m.–1:45 p.m. NRC Roles & Responsibilities
1:45 p.m.–2:15 p.m. SRP Overview
2:15 p.m.–2:30 p.m. Questions
2:30 p.m.–2:45 p.m. Break
2:45 p.m.–4:45 p.m. Comments on the Scope of the SRP
4:45 p.m.–5 p.m. Closing Remarks

Background

On October 9, 2004, the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA) was passed by Congress and was signed by the President on October 28, 2004. Section 3116 of the NDAA allows the U.S. Department of Energy (DOE) to determine that certain waste stemming from reprocessing of spent nuclear fuel is not high-level-waste (HLW). However, the NDAA is applicable only in the States of South Carolina and Idaho and does not apply to waste transported out of these States. The NDAA requires that: (1) DOE consult with NRC on all of its waste determinations in South Carolina and Idaho, and (2) NRC, in coordination with the State, monitor disposal actions taken by DOE for the purpose of assessing compliance with NRC regulations in 10 CFR part 61, subpart C. If the NRC determines that any disposal actions taken by DOE are not in compliance, the NDAA requires NRC to inform DOE, the affected State, and congressional subcommittees. In addition to NDAA activities conducted at the Savannah River Site (SRS) and Idaho National Laboratory (INL), DOE may make similar waste determinations at its Hanford site and at the West Valley Demonstration Project (WVDP) and may request NRC to provide technical reviews of those determinations. The staff has described its plans for implementing its activities under the NDAA in SECY–05–0073 and the Commission approved the plans in the corresponding Staff Requirements Memorandum dated June 30, 2005.

The NRC staff is developing a waste determination Standard Review Plan (SRP) to provide guidance to staff on reviewing waste determination information and analyses. This meeting is an opportunity for interested parties to submit comments on the scope of the SRP. The draft SRP will also be published for public comment and the comments received will be considered by the staff during development of the final SRP.

Draft SRP Outline

Introduction
Background for SRP
  How To Use the SRP
  Updating the SRP
  Structure of the SRP
  Introduction to WIR and NDAA
  Role of NRC in NDAA
Site-Specific and General Information
  Site-Specific System Description Information
  Applicable Waste Criteria
  Prior Waste Determinations
Site-Specific Criteria for West Valley (West Valley Final Policy Statement), Hanford (DOE Order 435.1), Savannah River and Idaho National Laboratory (National Defense Authorization Act, Section 3116)
  Removal of Radionuclides
  Concentration Limits
  Compliance With Performance Objectives of 10 CFR Part 61, Subpart C

Disposal
Modeling Approach
Source-Term Development
Climate and Infiltration
Engineered Barriers and Near-Field Radionuclide Transport
Far-Field Radionuclide Transport
Modifying Scenarios, Pathways, and Receptor Groups
Conceptual Models
Computer Codes/Models
Input Parameter Values
Evaluating Model Results
ALARA Analyses
References
Protection of Individuals During Operations
Inadvertent Intrusion
Scenarios for Modeling
Site Stability
Quality Assurance Program
Monitoring
Monitoring Methods
Demonstrating Compliance With 10 CFR 61, Subpart C
Noncompliance Reports
Appendices

The SRP scoping meeting officially begins at 1 p.m. and will include: (1) A presentation summarizing NRC roles and responsibilities, (2) an overview of the proposed draft SRP, and (3) an opportunity for interested government agencies, organizations, and individuals to provide comments on the scope of the SRP. This meeting will be transcribed by a court reporter. Persons wishing to provide oral comments will be asked to register at the meeting entrance. Individual oral comments may have to be limited to 5 minutes each, depending upon the number of persons who register. Please note that comments do not have to be provided at the public meeting and may be submitted at any time before November 25, 2005, as described in the **DATES** and **ADDRESSES** sections of this notice.

DATES: The public comment period on the SRP begins with publication of this notice and continues until November 25, 2005. Written comments should be submitted as described in the **ADDRESSES** section of this notice. Comments submitted by mail should be postmarked by that date to ensure consideration. Comments received or postmarked after that date will be considered to the extent practical. A public meeting to discuss the proposed draft SRP will be held on November 10, 2005 as described in the **SUMMARY** section of this notice.

ADDRESSES: Members of the public are invited and encouraged to submit comments to the Division of Waste Management and Environmental Protection, Low-Level Waste Section Chief, Mail Stop T7–J08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Please note Docket No. POOM–32, PROJ0734, PROJ0735, PROJ0736 when submitting comments. Comments will also be accepted by e-mail at *AHB1@nrc.gov* or by facsimile to (301) 415–5397, Attention: Anna Bradford with a subject line containing the document identifier: SRP.

FOR FURTHER INFORMATION CONTACT: For questions related to the Standard Review Plan, please contact Anna Bradford at (301) 415–5228. For public scoping meeting questions, please contact Michele O'Shaughnessy at (301) 415–6659.

Dated at Rockville, Maryland, this 26th day of October 2005.

For the Nuclear Regulatory Commission.

Ryan Whited,

Chief, Low-Level Waste Section, Environmental and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–6056 Filed 11–1–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of October 31, November 7, 14, 21, 28, December 5, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED

Week of October 31, 2005

Tuesday, November 1, 2005.
9:30 a.m.—Briefing on Implementation of Davis-Besse Lessons Learned Task Force (DBLLTF) Recommendations (Public Meeting) (Contact: Brendan Moroney, 301–415–3974).

This meeting will be webcast live at the Web address: *http://www.nrc.gov*.

Week of November 7, 2005—Tentative

There are no meetings scheduled for the Week of November 7, 2005.

Week of November 14, 2005—Tentative

There are no meetings scheduled for the Week of November 14, 2005.

Week of November 21, 2005—Tentative

Monday, November 21, 2005.
9:30 a.m.—Briefing on Status of New Reactor Issues, Part 1 (Public Meeting) (Contact: Laura Dudes, 301–415–0146).
1:30 p.m.—Briefing on Status of New Reactor Issues, Part 2 (Public Meeting) (Contact Laura Dudes, 301–415–0146).

These meetings will be webcast live at the Web address: *http://www.nrc.gov*.

Week of November 28, 2005—Tentative

Tuesday, November 29, 2005.
9:30 a.m.—Discussion of Management Issues (Closed-Ex. 2).
Wednesday, November 30, 2005.
9:30 a.m.—Briefing on EEO Program (Public Meeting) (Contact: Corenthis Kelley, 301–415–7380.

This meeting will be webcast live at the Web address: *http://www.nrc.gov*.

Week of December 5, 2005—Tentative

Thursday, December 8, 2005.
1 p.m.—Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Contact: John Larkins, 301–415–7360).

This meeting will be webcast live at the Web address: *http://www.nrc.gov*.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participaate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–4152100, or by e-mail at *aks@nrc.gov*. Determinations on requests for reasonable accommodation will be made on case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice nover the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: October 27, 2005.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 05–21915 Filed 10–31–05; 9:59 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–50; EA 05–197]

In the Matter of Entergy Operations, Inc., Grand Gulf Nuclear Station, Independent Spent Fuel Storage Installation; Order Modifying License (Effective Immediately)

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Order for Implementation of Interim Safeguards and Security Compensatory Measures.

FOR FURTHER INFORMATION CONTACT: Paul W. Harris, Senior Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415–1169; fax number: (301) 415–8555; e-mail *PWH1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, the U.S. Nuclear Regulatory Commission (NRC) is providing notice in the matter of Grand Gulf Nuclear Station Independent Spent Fuel Storage Installation Order Modifying License (Effective Immediately).

II. Further Information

I

Entergy Operations, Inc. (Entergy) has been issued a general license by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing storage of spent fuel in an independent spent fuel storage installation (ISFSI) in accordance with the Atomic Energy Act of 1954, 10 CFR Part 50, and 10 CFR Part 72. This Order is being issued to Entergy who has identified near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR Part 72. The Commission regulations at 10 CFR 72.212(b)(5) and 10 CFR 73.55(h)(1) require Entergy to maintain safeguards contingency plan procedures in accordance with 10 CFR Part 73, Appendix C. Specific safeguards requirements are contained in 10 CFR 73.55.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community and other governmental agencies, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1 [1] of this Order, on Entergy who has indicated near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR Part 72. These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that some measures may not be possible or necessary, or may need to be tailored to accommodate the specific circumstances existing at Entergy's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, the Commission concludes that security measures must be embodied in an Order consistent with the established regulatory framework. Entergy's general license issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in the circumstances described above, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 103, 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50, 72, and 73, *it is hereby ordered, effective immediately, that your general license is modified as follows:*

A. Entergy shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order except to the extent that a more stringent requirement is set forth in their security plan. Entergy shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation before April 26, 2006, or the first day that spent fuel is initially placed in the ISFSI, whichever is earlier.

B. 1. Entergy shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If they are unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensee's justification for seeking relief from or variation of any specific requirement.

2. If Entergy considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel, Entergy must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement(s) in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, Entergy must supplement its response to

[1] Attachment 1 contains safeguards information and will not be released to the public.

Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C.1. Entergy shall, within twenty (20) days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. Entergy shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding the provisions of 10 CFR 72.212(b)(5), all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Entergy's responses to Conditions B.1, B.2, C.1, and C.2, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind any of the above conditions upon demonstration by Entergy of good cause.

IV

In accordance with 10 CFR 2.202, Entergy must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Director, Office of Enforcement at the same address; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator for NRC Region IV at 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011–4005; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel, either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than Entergy requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Entergy or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Entergy may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

For the Nuclear Regulatory Commission.

Dated this 26th day of October 2005.

Jack R. Strosnider,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 05–21940 Filed 11–1–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–50; EA 05–198]

In the Matter of Entergy Operations, Inc., Grand Gulf Nuclear Station Independent Spent Fuel Storage Installation, Order Modifying License (Effective Immediately)

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Order for Implementation of Additional Security Measures Associated with Access Authorization.

FOR FURTHER INFORMATION CONTACT: Paul W. Harris, Senior Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415–1169; fax number: (301) 415–8555; e-mail *PWH1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, the U.S. Nuclear Regulatory Commission (NRC) is providing notice in the matter of Grand Gulf Nuclear Station Independent Spent Fuel Storage Installation Order Modifying License (Effective Immediately).

II. Further Information

I

Entergy Operations, Inc. (Entergy) holds a license issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing the operation of an Independent Spent Fuel Storage Installation (ISFSI) in accordance with the Atomic Energy Act of 1954 and Title 10 of the Code of Federal Regulations (10 CFR) part 50 and 10 CFR part 72. Commission regulations at 10 CFR 72.212(b)(5) and 10 CFR 73.55(h)(1) require Entergy to have a safeguards contingency plan to respond to threats of radiological sabotage and to protect the spent fuel against the threat of radiological sabotage.

Inasmuch as an insider has an opportunity equal to or greater than any other person to commit radiological sabotage, the Commission has

determined these measures to be prudent. This Order has been issued to all licensees who currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs to put the actions taken in response to the Advisories in the established regulatory framework and to implement additional security enhancements which emerged from the NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures are required to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1[1] of this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 1 to this Order in response to previously issued advisories, the October 2002 Order, or on their own. It also recognizes that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at the licensee's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that these actions must be supplemented further because the current threat environment continues to persist. Therefore, it is appropriate to require certain additional security measures and these measures must be embodied in an Order, consistent with the established regulatory framework.

In order to provide assurance that Entergy is implementing prudent measures to achieve a consistent level of protection to address the current threat environment, Entergy's general license issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in the circumstances described above, the public health, safety, and interest require that this Order be immediately effective.

III

Accordingly, pursuant to Sections 53, 103, 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50, 72, and 73, *It Is Hereby Ordered, Effective Immediately, That Your General License Is Modified as Follows:*

A. Entergy shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order except to the extent that a more stringent requirement is set forth in the Entergy's security plan. Entergy shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation no later than April 26, 2006, with the exception of the additional security measures B.4, which shall be implemented no later than October 26, 2006, or the first day that spent fuel is initially placed in the ISFSI, whichever is earlier.

B. 1. Entergy shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause Entergy to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide Entergy's justification for seeking relief from or variation of any specific requirement.

2. If Entergy considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel, Entergy must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirements in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, Entergy must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required under Condition B.1.

C. 1. Entergy shall, within twenty (20) days of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 1.

2. Entergy shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding the provisions of 10 CFR 72.212(b)(5), all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Entergy's response to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by Entergy of good cause.

IV

In accordance with 10 CFR 2.202, Entergy must, and any other person

[1] Attachment 1 contains SAFEGUARDS INFORMATION and will not be released to the public.

adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Director, Office of Enforcement at the same address; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator for NRC Region IV at 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011–4005; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that requests for a hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person other than Entergy requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Entergy or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(I), Entergy may, in addition to demanding a hearing at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations or error.

In the absence of any request for hearing or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires, if a hearing request has not been received. *An Answer or a Request for Hearing Shall Not Stay the Immediate Effectiveness of This Order.*

For the Nuclear Regulatory Commission.
Dated this 26th day of October 2005.

Jack R. Strosnider,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–6055 Filed 11–1–05; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Application and Claim for RUIA Benefits Due at Death.
(2) *Form(s) submitted:* UI–63.
(3) *OMB Number:* 3220–0055.
(4) *Expiration date of current OMB clearance:* 12/31/2005.
(5) *Type of request:* Extension of a currently approved collection.
(6) *Respondents:* Individuals or households.
(7) *Estimated annual number of respondents:* 200.
(8) *Total annual responses:* 200.
(9) *Total annual reporting hours:* 23.
(10) *Collection description:* The collection obtains the information needed by the Railroad Retirement Board to pay, under section 2(g) of the RUIA, benefits under that Act accrued, but not paid because of the death of the employee.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov* .

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 05–21821 Filed 11–1–05; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52656; File No. 4–429]

Joint Industry Plan; Order Approving Amendment No. 16 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage Relating to the Definition of Firm Customer Quote Size and Limitations on Sending Secondary P/A Orders

October 24, 2005.

I. Introduction

On April 13, 2005, April 26, 2005, April 26, 2005, April 27, 2005, May 27, 2005 and June 2, 2005, the International Securities Exchange, Inc. (''ISE''), American Stock Exchange LLC (''Amex''), Chicago Board Options Exchange, Incorporated (''CBOE''), Pacific Exchange, Inc. (''PCX''), Boston Stock Exchange, Inc. (''BSE''), and Philadelphia Stock Exchange, Inc. (''Phlx'') (collectively, the ''Participants'') respectively submitted to the Securities and Exchange Commission (''Commission'') an amendment (''Joint Amendment No. 16'') to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage(the ''Linkage Plan''). [1]

[1] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, upon separate requests by the Phlx, PCX, and BSE, the Commission issued orders to permit these exchanges to participate in the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850

Continued

The Participants are proposing: (i) To amend the definition of ''Firm Customer Quote Size'' (''FCQS'')[2] to provide automatic executions for Principal Acting as Agent Orders (''P/A Orders'')[3] sent via the intermarket option linkage (''Linkage'') up to the full size of a Participant's disseminated quotation; and (ii) to eliminate a 15-second waiting period between the sending of P/A Orders. The proposed amendment to the Linkage Plan was published in the **Federal Register** on September 16, 2005.[4] No comments were received on the proposed amendment. This order approves the proposed amendment to the Linkage Plan.

II. Description and Purpose of the Proposed Amendment

The purpose of Joint Amendment No. 16 is to modify the Linkage Plan in two respects. First, the definition of FCQS will be amended to reflect that all Participants disseminate dynamic option quotes with size. Specifically, Participants propose to amend the Linkage Plan so that the FCQS will be calculated based on the size of the disseminated quotation of the Participant receiving the P/A Order. Secondly, Joint Amendment No. 16 will eliminate a 15-second waiting period for sending a subsequent P/A Order currently provided for in the Linkage Plan. Finally, Joint Amendment No. 16 will clarify the conditions under which automatic execution is required in response to P/A Orders.

III. Discussion

After careful consideration, the Commission finds that the proposed amendment to the Linkage Plan is consistent with the requirements of the Securities Exchange Act of 1934 (''Act'') and the rules and regulations thereunder. Specifically, the Commission finds that the proposed amendment to the Linkage Plan is consistent with Section 11A of the Act[5] and Rule 608 under the Act,[6] in that the proposed amendment to calculate FCQS on the basis of the size of the Participant receiving the P/A Order is appropriate and should facilitate the use of the Linkage for the Participants. This change, coupled with the proposed elimination of the 15-second waiting period for sending a subsequent P/A Order should facilitate investors' intermarket access to superior prices disseminated by Participants other than the one to which the order was initially sent.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act[7] and Rule 608 thereunder,[8] that the proposed Joint Amendment No. 16 is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6054 Filed 11–1–05; 8:45 am]

BILLING CODE 8010–01–P

(November 28, 2000), 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000) and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[2] *See* Section 2(11) of the Linkage Plan.

[3] *See* Section 2(16)(a) of the Linkage Plan.

[4] *See* Securities Exchange Act Release No. 52401 (September 9, 2005), 70 FR 54781.

[5] 15 U.S.C. 78k–l.

[6] 17 CFR 242.608.

[7] 15 U.S.C. 78k–l.

[8] 17 CFR 242.608.

[9] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52684; File No. SR–MSRB–2005–15]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revisions to the Series 9/10 Examination Program

October 26, 2005.

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 October 18, 2005, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the MSRB. The MSRB has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission revisions to the study outline and selection specifications for the Limited Principal—General Securities Sales Supervisor (Series 9/10) examination program.[5] The proposed revisions update the material to reflect changes to the laws, rules, and regulations covered by the examination, as well as modify the content of the examination program to track more closely the functional workflow of a Series 9/10 limited principal. The MSRB is not proposing any textual changes to the rules of the MSRB.

The revised study outline is available on the MSRB's Web site (*http://www.msrb.org*), at the MSRB's principal office, and at the Commission's Public Reference Room. However, the MSRB has omitted the Series 9/10 selection specifications from this filing and has submitted the specifications under separate cover to the Commission with a request for confidential treatment pursuant to Rule 24b–2 under the Act.[6]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB 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

Section 15B(b)(2)(A) of the Act[7] authorizes the MSRB to prescribe standards of training, experience, competence, and such other

[5] The MSRB is also proposing corresponding revisions to the Series 9/10 question bank, but based upon instructions from the Commission staff, the MSRB is submitting SR–MSRB–2005–15 for immediate effectiveness pursuant to Section 19(b)(3)(A)(i) of the Act and Rule 19b–4(f)(1) thereunder, and is not filing the question bank for Commission review. *See* letter to Diane G. Klinke, General Counsel, MSRB, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000. The question bank is available for Commission review.

[6] 17 CFR 240.24b–2.

[7] 15 U.S.C. 78o–4(b)(2)(A).

qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors. The MSRB has developed examinations that are designed to establish that persons associated with brokers, dealers and municipal securities dealers that effect transactions in municipal securities have attained specified levels of competence and knowledge. The MSRB periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

MSRB Rule G–3(c) states that the Municipal Securities Sales Supervisor may only supervise those activities and functions relating directly to customer sales and purchases of municipal securities. The activities over which a Municipal Securities Sales Principal may have responsibility include: approving transactions with customers; approving the opening of customer accounts; approving discretionary accounts and related transactions; reviewing all customer accounts regularly and frequently; supervising the handling of written customer complaints; and reviewing correspondence with customers in the solicitation or execution of municipal securities transactions. The supervision of activities such as trading, underwriting, research, and providing financial advice and counseling to issuers cannot be the responsibility of the Municipal Securities Sales Principal; such activities must be supervised by a person qualified as a Municipal Securities Principal. MSRB rules do not specify that a broker, dealer or municipal securities dealer must maintain any Municipal Securities Sales Principals on its staff.

The only examination that qualifies a Municipal Securities Sales Principal is the General Securities Sales Supervisor Qualification Examination (Series 9/10). The Series 9/10 examination is an industry-wide examination and tests a candidate's knowledge of securities industry rules and regulations and certain statutory provisions pertinent to the supervision of sales activities.

The Series 9/10 examination program is shared by the MSRB and the following self-regulatory organizations (''SROs''): the American Stock Exchange LLC; the Chicago Board Options Exchange, Incorporated; the National Association of Securities Dealers, Inc. (''NASD''); the New York Stock Exchange, Inc. (''NYSE''); the Pacific Exchange, Inc.; and the Philadelphia Stock Exchange, Inc.

A committee of industry representatives, together with the staff of the MSRB and the SROs, recently undertook a periodic review of the Series 9/10 examination program. As a result of this review, the MSRB is proposing to update the content of the examination to cover Regulation S–P;[8] MSRB Rules G–37 and G–38; SRO research analyst and anti-money laundering rules; municipal fund securities (*e.g.*, 529 college savings plans); and exchange traded funds. MSRB is further proposing revisions to the study outline to reflect the SEC short sale requirements. In addition, as part of an ongoing effort to align the examination more closely to the supervisory duties of a Series 9/10 limited principal, MSRB is proposing to modify the content of the examination to track the functional workflow of a Series 9/10 limited principal. Also, MSRB is proposing to include questions related to parallel rules of the MSRB, the options exchanges, NASD, and the NYSE in the same section of the examination.

As a result of the revisions, MSRB is proposing to modify the main section headings and the number of questions on each section of the Series 9/10 study outline as follows: Section 1—Hiring, Qualifications, and Continuing Education, 9 questions; Section 2—Supervision of Accounts and Sales Activities, 94 questions; Section 3—Conduct of Associated Persons, 14 questions; Section 4—Recordkeeping Requirements, 8 questions; Section 5—Municipal Securities Regulation, 20 questions; and Section 6—Options Regulation, 55 questions. Section 6, which covers options, constitutes the Series 9 portion of the examination. Series 10 covers general securities and municipal securities. The revised examination continues to cover the areas of knowledge required for the supervision of sales activities.

The MSRB is proposing these changes to the entire content of the Series 9/10 examination, including the selection specifications and question bank. The number of questions on the Series 9/10 examination will remain at 200, and candidates will continue to have four hours to complete the Series 10 portion and one and one-half hours to complete the Series 9 portion. Also, each question will continue to count one point, and each candidate must correctly answer 70 percent of the questions on each series, 9 and 10, to receive a passing grade.

[8] 17 CFR 248.1–18; 17 CFR 248.30; and 17 CFR 248, Appendix A.

As noted below, the MSRB understands that the other SROs also will file with the Commission similar proposed rule changes reflecting the revisions to the Series 9/10 examination program.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(A) of the Act,[9] which authorizes the MSRB to prescribe standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors. Section 15B(b)(2)(A) of the Act also provides that the Board may appropriately classify municipal securities brokers and municipal securities dealers and their associated personnel and require persons in any such class to pass tests prescribed by the Board.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[10] and Rule 19b–4(f)(i) thereunder,[11] in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. MSRB proposes to implement the revised Series 9/10 examination program no later than November 30, 2005. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise

[9] 15 U.S.C. 78o–4(b)(2)(A).

[10] 15 U.S.C. 78s(b)(3)(A)(i).

[11] 17 CFR 240.19b–4(f)(i).

in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2005–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–MSRB–2005–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. 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–MSRB–2005–15 and should be submitted on or before November 23, 2005.

[12] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6052 Filed 11–1–05; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52683; File No. SR–NYSE–2005–62]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Trade Shredding

October 26, 2005.

I. Introduction

On September 9, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended, (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to trade shredding. The proposed rule change was published for notice and comment in the **Federal Register** on September 21, 2005.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The NYSE proposed to add NYSE Rule 123G to prohibit members, member organizations and associated persons from unbundling orders for execution for the primary purpose of maximizing a monetary or like payment to the member, member organization or associated person without regard for the best interests of the customer.

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[4] particularly Section 6(b)(5) of the Act which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, 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.[5] The Commission believes that the proposed rule change should help eliminate the distortive practice of trade shredding, and, therefore, promote just and equitable principles of trade.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–NYSE–2005–62), be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6053 Filed 11–1–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52435 (September 14, 2005), 70 FR 55440.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed

and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB) Office of Management and Budget, Fax: 202–395–6974.

(SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235; Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. Employee Verification Service (EVS)—0960–0669

Background

Under Internal Revenue Service regulations, employers are required to provide wage and tax data to SSA using form W–2, Wage and Tax Statement or its electronic equivalent. As part of this process, the employer must furnish the employee's name and Social Security Number (SSN). This information must match SSA's records in order for the employee's wage and tax data to be properly posted to the Earnings Record. Information that is incorrectly provided to the Agency must be corrected by the employer using an amended reporting form, which is a labor-intensive and time-consuming process for both SSA and the employer. Therefore, to help ensure that employers provide accurate name and SSN information on their wage reports, SSA is offering the EVS service whereby employers can verify, via magnetic tape, cartridge, diskette, paper, and telephone, if the reported name and SSN of their employee matches SSA's records.

EVS Collection

SSA will use the information collected through the EVS to verify that the employee name and SSN information, provided by employers, matches SSA records. SSA will respond to the employer informing them only of matches and mismatches of submitted information. Respondents are employers who provide wage and tax data to SSA who elect to use EVS to verify their employees' names and SSNs.

Type of Request: Extension of an OMB-Approved Information Collection.

Number of Respondents: 50,000.

Frequency of Response: 12.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 100,000 hours.

2. Partnership Questionnaire—20 CFR 404.1080–.1082—0960–0025

Form SSA–7104 is used to establish several aspects of eligibility for Social Security benefits, including the accuracy of reported partnership earnings, the veracity of a retirement, and lag earnings where they are needed for insured status. The respondents are applicants for Social Security Old Age, Survivors, and Disability Insurance Benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 12,350.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 6,175 hours.

3. Letter to Employer Requesting Information About Wages Earned by a Beneficiary—20 CFR 404.703 and 404.801—0960–0034

Form SSA–L725 is used by SSA to establish the exact wages earned by a Social Security beneficiary in situations where SSA has incomplete or questionable wage data. In turn, this information is used to determine if the beneficiary's current SSA payments are accurate. The respondents are employers of wage earners whose earnings records are incomplete or have been questioned.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 150,000.

Frequency of Response: 1.

Average Burden Per Response: 40 minutes.

Estimated Annual Burden: 100,000 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. Application To Collect a Fee for Payee Services—0960–NEW

Information requested on form SSA–445 will be provided by the fee for payee services applicant. SSA will be the only user of this information. By using form SSA–445, SSA will be able to determine whether the applicant meets the requirements to become a fee for service organizational payee, and if the applicant has provided all the information and documentation required. Based on the information provided on form SSA–445, SSA will issue a determination authorizing or denying permission to collect fees for payee services.

Type of Request: New information collection.

Number of Respondents: 100.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 5 hours.

2. Annual Registration Statement Identifying Separated Participants With Deferred Benefits, Schedule SSA—0960–0606

Schedule SSA is a form filed annually as part of a series of pension plan documents required by section 6057 of the IRS Code. Administrators of pension benefit plans are required to report specific information on future plan benefits for those participants who left plan coverage during the year. SSA maintains the information until a claim for Social Security benefits has been approved. At that time, SSA notifies the beneficiary of his/her potential eligibility for payments from the private pension plan. The respondents are administrators of pension benefit plans or their service providers employed to prepare the schedule SSA on behalf of the pension benefit plan. Below are the estimates of the cost and hour burdens for completing and filing schedule SSA(s). We have used an average to estimate the hour burden. However, the burden may be greater or smaller depending on whether the respondent is a large or small pension benefit plan and how many schedule SSA's are filed in a given year.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 88,000.

Frequency of Response: 1.

Average Burden Per Response: 2.5 hours.

Estimated Annual Burden: 220,000 hours.

Estimated Annual Cost Burden for all Respondents: $12,194,400.

3. Protection and Advocacy for Beneficiaries of Social Security (PABSS)—0960–NEW

Background

In August of 2004, SSA announced its intention to award grants to establish community-based protection and advocacy projects in every State and U.S. Territory, as authorized under section 1150 of the Social Security Act. Potential awardees were protection and

advocacy organizations established under Title I of the Developmental Disabilities Assistance and Bill of Rights Act which submitted a timely application conforming to the requirements in the notice. The projects funded under this grant are part of SSA's strategy to increase the number of beneficiaries who return to work and achieve self-sufficiency as the result of receiving advocacy or other services. The overall goal of the program is to provide information and advice about obtaining vocational rehabilitation and employment services and to provide advocacy or other services that a beneficiary with a disability may need to secure, maintain, or regain gainful employment.

Collection Activities

The PABSS project collects identifying information from the project sites and benefits specialists. In addition, data are collected from the beneficiaries on background, employment, training, benefits, and work incentives. SSA uses the information to manage the program, with particular emphasis on contract administration, budgeting, and training.

SSA also uses the information to evaluate the efficacy of the program and to ensure that those dollars appropriated for PABSS services are being spent on SSA beneficiaries. The project data will be valuable to SSA in its analysis of and future planning for the Social Security Disability Insurance and Supplemental Security Income programs.

Type of Request: New information collection.

Title of collection	Number of annual responses	Frequency of response	Average burden per response (min.)	Estimated annual burden hours
Site	57	5	1.8	8.6
Specialist	225	5	1.8	33.8
Beneficiary	60,000	1	5.3	5,300
Total Estimated Annual Burden				5,342

4. SSI Monthly Wage Reporting Phase 2 Pilot—20 CFR 416.701–732–0960–NEW

Supplemental Security Income (SSI) recipients are required to report changes in their income, resources and living arrangements that may affect eligibility or payment amount. Currently, SSI recipients report changes on Form SSA–8150, Reporting Events—SSI, or to an SSA teleservice representative through SSA's toll-free telephone number, or they visit their local Social Security office.

The SSI wage reporting program area has the highest error rate largely due to non-reporting, which accounts for approximately $500 million in overpayments each year. Consequently SSA is evaluating methods for increasing reporting. SSA will conduct a pilot to test an additional method for individuals to report wages for the SSI program. We are testing to determine if, given an easily accessible automated format, individuals will increase compliance with reporting responsibilities. Increased timely reporting could result in a decrease in improper payments. SSA will also be testing the use of knowledge-based authentication to determine if this is an effective method of accessing SSA's system.

During the pilot, participants who need to report a change in earned income will call an SSA toll-free telephone number to report the change. The participants will access SSA's system using knowledge-based authentication (providing name, SSN and date of birth). Participants will either speak their report (voice recognition technology) or key in the information using the telephone key pad. SSA will issue receipts to disabled recipients who report wages using this method. Respondents to this collection are SSI recipients, deemors and representative payees of recipients who agree to participate in the pilot.

Type of Request: New information collection.

Number of Respondents: 600.

Frequency of Response: 6.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 300 hours.

Dated: October 26, 2005.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 05–21820 Filed 11–1–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending October 14, 2005

The following Agreements were filed with the Department of Transportation under sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2005–22713.

Date Filed: October 13, 2005.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 464—Resolution 010x. TC3 Japan-Korea-South East Asia. Special Passenger Amending Resolution between Japan and China (excluding Hong Kong SAR and Macao SAR).

Intended effective date: 19 October 2005.

Docket Number: OST–2005–22714.

Date Filed: October 13, 2005.

Parties: Members of the International Air Transport Association.

Subject: TC23/TC123 Middle East-TC3-Reso 017c. Geneva & Teleconference, 12–14 September 2005 (Memo 0243). TC23/TC123 Middle East-South Asian Subcontinent. Reso 002b. Geneva & Teleconference, 12–14 September 2005 (Memo 244). TC23/TC123 Middle East-South West Pacific-Reso 002ar. Geneva & Teleconference, 12–14 September 2005 (Memo 0245). TC23/TC123 Middle East-Japan, Korea Reso 002be. Special Amending Resolution between Middle East and Japan Korea. Geneva & Teleconference, 12–14 September 2005 (Memo 0246).

Intended effective date: 15 January 2006.

Docket Number: OST–2005–22718.

Date Filed: October 13, 2005.

Parties: Members of the International Air Transport Association.

Subject: TC23/123 Passenger Tariff Coordinating Conferences. Geneva and Teleconference, 26–28 September 2005. TC23/123 Europe-South East Asia Expedited. Resolution 002ao.

Intended effective date: 15 November 2005.

Docket Number: OST–2005–22722.

Date Filed: Ocotboer 13, 2005.

Parties: Members of the International Air Transport Association.

Subject: TC23/123 Passenger Tariff Coordinating Conferences. Geneva and Teleconference, 26–28 September 2005. TC23/123 Europe-South East Asia Expedited. Resolution 002bh (Memo 0212).

Intended effective date: 1 December 2005.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 05–21827 Filed 11–1–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Certificates Of Public Convenience and Necessity and Foreign Air Carrier Permits; Weekly Applications

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 October 14, 2005. 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–2005–22719.

Date Filed: October 13, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 3, 2005.

Description: Application of Safe Air International Inc. dba/ Island Express advising the Department that, in compliance with Section 204.7 Safe Air International intents to resume scheduled passenger operations as a commuter carrier.

Docket Number: OST–2000–7548.

Date Filed: October 13, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 3, 2005.

Description: Application of Continental Airlines, Inc., requesting renewal of its Route 682 certificate authorizing it to provide scheduled air transportation of persons, property, and mail between Newark, NJ and Lima, Peru, via the intermediate point Bogota, Columbia.

Docket Number: OST–2000–7559.

Date Filed: October 14, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 4, 2005.

Description: Application of Atlas Air, Inc., requesting renewal of its experimental certificate of public convenience and necessity for Route 796, authorizing it to provide scheduled foreign air transportation of property and mail between the terminal point Miami, FL, on the one hand, via the intermediate point Lima, Peru, and the coterminal points Manaus, Rio de Janeiro and Sao Paulo, Brazil, on the other hand, and beyond Brazil to Santiago, Chile.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 05–21828 Filed 11–1–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review, Request for Comments; Renewal of an Approved Information Collection Activity, Training and Qualification Requirements for Check Airmen and Flight Instructors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The rule allows some experienced pilots who would otherwise qualify as flight instructors or check airmen, but who are not medically eligible to hold the requisite medical certificate, to perform flight instructor or check airmen functions in a simulator.

DATES: Please submit comments by December 2, 2005.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Training and Qualification Requirements for Check Airmen and Flight Instructors.

Type of Request: Renewal of an approved collection.

OMB Control Number: 2120–0600.

Form(s): None.

Affected Public: A total of 3,000 pilots.

Frequency: The recordkeeping is conducted as an as-needed basis.

Estimated Average Burden Per Response: Less than one minute.

Estimated Annual Burden Hours: An estimated 12.5 hours annually.

Abstract: The rule allows some experienced pilots who would otherwise qualify as flight instructors or check airmen, but who are not medically eligible to hold the requisite medical certificate, to perform flight instructor or check airmen functions in a simulator.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 26, 2005.

Judith D. Street,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 05–21876 Filed 11–1–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review, Request for Comments; Renewal of an Approved Information Collection Activity, Flight Engineers and Flight Navigators—FAR Part 63

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: 49 U.S.C., 44902(a), 44702(a)(2), and 44707(1) authorize issuance of airman certificates and provide for examination and rating of flying schools. FAR 63 prescribes requirements for flight navigator certification and training course requirements for these airmen.

Information collected is used to determine certification eligibility.

DATES: Please submit comments by December 2, 2005.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Flight Engineers and Flight Navigators—FAR Part 63.

Type of Request: Renewal of an approved collection.

OMB Control Number: 2120–0007.

Form(s): FAA Form 8300–3.

Affected Public: A total of 632 airmen.

Frequency: The information is collected on an as-needed basis.

Estimated Average Burden Per Response: 20 minutes.

Estimated Annual Burden Hours: An estimated 505 hours annually.

Abstract: 49 USC, 44902(a), 44702(a)(2), and 44707(1) authorize issuance of airman certificates and provide for examination and rating of flying schools. FAR 63 prescribes requirements for flight navigator certification and training course requirements for these airmen. Information collected is used to determine certification eligibility.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 26, 2005.

Judith D. Street,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 05–21877 Filed 11–1–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Marine War Risk Insurance; Transportation Secretary's Authorities Extension

AGENCY: Maritime Administration, DOT.

ACTION: Notice of Secretarial Extension of Authority; Marine War Risk Insurance Under Title XII of the Merchant Marine Act, 1936.

SUMMARY: On December 12, 2001, President George W. Bush approved the provision of vessel war risk insurance by memorandum for the Secretary of State and the Secretary of Transportation. The approval was for the provision by the Secretary of Transportation of insurance or reinsurance of vessels (including cargoes and crew) entering the Middle East region against loss or damage by war risks in the manner and to the extent approved in Title XII of the Merchant Marine Act, 1936 as amended (Act), 46 U.S.C. App. 1281, *et seq.*

The President delegated to the Secretary of Transportation the authority vested in him by section 1202 of the Act, to approve the provision of insurance or reinsurance after the expiration of 6 months and to bring this approval to the attention of all operators and to arrange for its publication in the **Federal Register**.

On October 14, 2005 the Secretary of Transportation approved the extension of the authority to provide such insurance for a 1 year period, beginning December 13, 2005.

Authority: 49 CFR 1.66.

Dated: October 27, 2005.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 05–21853 Filed 11–1–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 26, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before December 2, 2005 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1500.

Type of Review: Extension.

Title: Pre-Screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits.

Form: IRS form 8850.

Description: A job applicant completes and signs, under penalties of perjury, the top portion of the form to indicate that he or she is a member of a targeted group. If the employer has a belief that the applicant is a member of a targeted group, the employer signs the other portion of the form under penalties of perjury and submits it to the SESA as part of a written request of certification.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 1,596,000 hours.

OMB Number: 1545–1509.

Type of Review: Revision.

Title: 941 Telefile, Employer's Quarterly Federal Tax Returns.

Form: IRS form 941.

Description: Form 941 Telefile is used by employers to report by phone payments made to employees subject to income and social security and Medicare taxes and the amounts of these taxes.

Respondents: Business or other for-profit, Not-for-profit institutions and State, Local or Tribal Government.

Estimated Total Burden Hours: 7,488,800 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428. Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316. Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. 05–21815 Filed 11–1–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

[Docket No. BPD–CC–05–]

Change in the Sell Direct Fee Schedule

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury is announcing the fee schedule for Sell Direct. Sell Direct fees are charged to the Legacy Treasury Direct and the TreasuryDirect investor for the service of selling unmatured securities in the secondary market, pursuant to the Regulations Governing Book-Entry Treasury Bonds, Notes and Bills Held in Legacy Treasury Direct® and the Regulations Governing Securities Held in TreasuryDirect®.

DATES: Effective Date: This notice is effective upon publication in the **Federal Register**.

ADDRESSES: You can download this notice at the following Internet addresses: *http://www.publicdebt.treas.gov* or *http://www.gpoaccess.gov/ecfr.*

FOR FURTHER INFORMATION CONTACT: Elisha Whipkey, Director, Division of Program Administration, Office of Securities Operations, Bureau of the Public Debt, at (304) 480–6319 or *elisha.whipkey@bpd.treas.gov.*

Susan Klimas, Attorney-Adviser, Edward Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *susan.klimas@bpd.treas.gov.*

SUPPLEMENTARY INFORMATION: A transaction fee is charged to the investor for each security sold in the secondary market using Sell Direct. For purposes of computing the transaction fee, a security is considered as any amount identified by a separate CUSIP number within a Legacy Treasury Direct or TreasuryDirect account. The regulations governing Sell Direct are located at 31 CFR 357.22(b) and 31 CFR part 363.209.

Schedule of Fees for the Sale of Securities in the Secondary Market

The fee schedule for the sale of an unmatured security in the secondary market using Sell Direct is as follows: A fee of $45 will be charged for each security sold in the secondary market on behalf of the investor using Sell Direct.

Dated: October 26, 2005.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 05–21844 Filed 11–1–05; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel will be held. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, November 3, 2005, from 1:30 to 5:30 p.m. and Friday, November 4, 2005, from 8 a.m. to noon, Eastern Time has been cancelled. The meeting will be rescheduled for a later date.

FOR FURTHER INFORMATION CONTACT: LaVerne Walker at 1–866–602–2223.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel would have been Thursday, November 3, 2005, from 1:30 to 5:30 p.m. and Friday, November 4, 2005, from 8 a.m. to noon, Eastern Time. If you would like to have the Taxpayer Advocacy Panel consider a written statement, please call 1–866–602–2223, or write to LaVerne Walker at 1111 Constitution Avenue, NW., Room 7704, Washington, DC 20224. Or you can contact us at *www.improveirs.org.*

Ms. Walker can be reached at 1–866–602–2223 or by fax at 202–622–6143.

Dated: October 26, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–6051 Filed 11–1–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0018]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of General Counsel, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of General Counsel (OGC), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine accredited service organization representatives' qualification to represent claimants before VA.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 3, 2006.

ADDRESSES: Submit written comments on the collection of information to Michelle D.D. Bernstein (022G2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *michelle.bernstein@mail.va.gov.* Please refer to ''OMB Control No. 2900–0018'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Michelle D.D. Bernstein at (202) 273–6315 or fax (202) 273–6404.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OGC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OGC's functions, including whether the information will have practical utility; (2) the accuracy of OGC's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Accreditation of Service Organization Representatives, VA Form 21.

OMB Control Number: 2900–0018.

Type of Review: Extension of a currently approved collection.

Abstract: Service organizations are required to file an application with VA to establish eligibility for accreditation for representatives of the organization to represent benefit claimants before VA. VA Form 21 is completed by service

organizations to establish accreditation for representatives, recertify the qualifications of accredited representatives, and to cancel representatives' accreditation due to misconduct or lack of competence. VA uses the information collected to determine whether service organizations' representatives continue to meet regulatory eligibility requirements and to ensure claimants have qualified representatives to assist in the preparation, presentation, and prosecution of their claims for benefits.

Affected Public: Not-for-profit institutions.

Estimated Annual Burden: 1,025 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,867.

Dated: October 19, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–6042 Filed 11–1–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0208]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information used to notify contractors of available work, solicit and evaluate bids, and monitor work in progress.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 3, 2006.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *ann.bickoff@hq.med.va.gov*. Please refer to ''OMB Control No. 2900–0208'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff at (202) 273–8310 or fax (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: a. Architect—Engineer Fee Proposal, VA Form 10–6298.

b. Daily Log (Contract Progress Report—Formal Contract), VA Form 10–6131.

c. Supplement Contract Progress Report, VA Form 10–61001a.

OMB Control Number: 2900–0208.

Type of Review: Extension of a currently approved collection.

Abstract: a. The architect-engineering firm selected for negotiation of a contract with VA is required to submit a fee proposal based on the scope and complexity of the project. VA Form 10–6298 is used to obtain such proposal and supporting cost or pricing data from the contractor and subcontractor in the negotiation of the architect-engineer contracts for design and construction services.

b. VA Forms 10–6131 and 10–6001a is used to record data necessary to assure the contractor provides sufficient labor and material to accomplish the contract work. VA Form 10–6131 is used for national contracts and VA Form 10–6001a is used for smaller VA Medical Center station level projects and as an option on major projects before the interim schedule is submitted.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 5,341 hours.

a. VA Form 10–6298—1,000.

b. VA Form 10–6131—3,591.

c. VA Form 10–6001a—750.

Estimated Average Burden Per Respondent: a. VA Form 10–6298—4 hours.

b. VA Form 10–6131—12 minutes.

c. VA Form 10–6001a—12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: a. VA Form 10–6298—250.

b. VA Form 10–6131—17,955.

c. VA Form 10–6001a—3,750.

Dated: October 20, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–6044 Filed 11–1–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0034]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to evaluate a trainee's request for leave from Vocational Rehabilitation and Employment Program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 3, 2006.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please

refer to ''OMB Control No. 2900–0034'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or fax (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Trainee Request for Leave—Chapter 31, Title 38, U. S. C., VA Form 28–1905h.

OMB Control Number: 2900–0034.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1905h is used to request leave and to provide the necessary information to determine whether to approve a trainee's request for leave from Vocational Rehabilitation and Employment Program. A trainer or authorized school official must verify on the form the effect the absence will have on the veteran's progress in the program. Upon approval of the request, the veteran can receive subsistence allowance and other program services during the leave period as if he or she were attending training. Disapproval of the request may result in loss of subsistence allowance for the leave period.

Affected Public: Individuals or households.

Estimated Annual Burden: 7,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: October 24, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–6047 Filed 11–1–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0013]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine eligibility for issuance of a burial flag for a deceased veteran.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 3, 2006.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0013'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or fax (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for United States Flag for Burial Purposes, VA Form 21–2008.

OMB Control Number: 2900–0013.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–2008 is used to determine eligibility for issuance of a burial flag to a family member or friend of a deceased veteran.

Affected Public: Individuals or households, Federal Government and State, Local or Tribal Government.

Estimated Annual Burden: 162,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 650,000.

Dated: October 24, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–6048 Filed 11–1–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0112]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved

collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine whether a veteran can be released from liability on a Government home loan.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 3, 2006.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or *mailto:irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0112'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or fax (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Statement of Holder or Servicer of Veteran's Loan, VA Form 26–559.

OMB Control Number: 2900–0112.

Type of Review: Extension of a currently approved collection.

Abstract: Veteran-borrowers may sell their homes subject to the existing VA-guaranteed mortgage lien without prior approval of VA if the commitment for the loan was made prior to March 1, 1988. However, if they request release from personal liability to the Government in the event of a subsequent default by a transferee, VA must determine that (1) Loan payments are current; (2) the transferee will assume the veteran's legal liabilities in connection with the loan; and (3) the purchaser qualifies from a credit standpoint. A veteran-borrower may sell his or her home to a veteran-transferee. However, eligible transferees must meet all the requirements in addition to having sufficient available loan guaranty entitlement to replace the amount of entitlement used by the seller in obtaining the original loan.

Affected Public: Individuals or households, Business or other for profit.

Estimated Annual Burden: 400 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,400.

Dated: October 24, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–6049 Filed 11–1–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Disability Benefits Commission; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 (Federal Advisory Committee Act) that the Veterans' Disability Benefits Commission has scheduled a meeting for Thursday, November 17, 2005, and Friday, November 18, 2005, in hearing room 340, House Committee on Veterans' Affairs, Cannon House Office Building, Washington, DC. The meeting will begin each day at 9 a.m. and end at 4 p.m. The meeting is open to the public.

The purpose of the Commission is to carry out a study of the benefits under the laws of the United States that are provided to compensate and assist veterans and their survivors for disabilities and deaths attributable to military service.

The agenda for the meeting will include a review of the Statement of Work for contracting with the Center for Naval Analyses for Commission approval and a discussion of potential field hearings to be conducted by Commission members during calendar year 2006.

Interested persons may attend and present oral statements to the Commission. Time for oral presentations will be limited to five minutes or less, depending on the number of participants. Interested parties may provide written comments for review by the Commission prior to the meeting, by e-mail to: *veterans@vetscommision.intranets.com* or by mail to: Mr. Ray Wilburn, Executive Director, Veterans' Disability Benefits Commission, 1101 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20004.

Dated: October 25, 2005.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–21775 Filed 11–1–05; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 70, No. 211

Wednesday, November 2, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383 and 384

[Docket No. FMCSA–2005–21603]

RIN 2126–AA94

Commercial Driver's License Standards; School Bus Endorsement

Corrections

In rule document 05–19292 beginning on page 56589 in the issue of Wednesday, September 28, 2005, make the following corrections:

1. On page 56590 in the first column, under the heading **Legal Basis for Rulemaking**, in the second line, ''(Pub. L. 9-570)'' should read ''(Pub. L. 99-570)''.

2. On the same page, in the second column, in the second full paragraph, in the fifth line, ''(Pub. L. 10-59)'' should read ''(Pub. L. 109-59)''.

PART 383—[CORRECTED]

3. On page 56593, in the second column, under amendatory instruction 1., in the authority citation, in the fourth line, ''Pub. L. 10-59'' should read ''Pub. L. 109-59''.

PART 384—[CORRECTED]

4. On the same page, in the same column, under amendatory instruction 3., in the authority citation, in the third line, ''Pub. L. 10-59'' should read ''Pub. L. 109-59''.

[FR Doc. C5–19292 Filed 11–1–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
November 2, 2005

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 Fender's Blue Butterfly (*Icaricia icarioides fenderi*), *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's Lupine), and *Erigeron decumbens* var. *decumbens* (Willamette Daisy); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT91

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Fender's Blue Butterfly (*Icaricia icarioides fenderi*), *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's Lupine), and *Erigeron decumbens* var. *decumbens* (Willamette Daisy).

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 Fender's blue butterfly (*Icaricia icarioides fenderi*), and two plants, *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine), and *Erigeron decumbens* var. *decumbens* (Willamette daisy) pursuant to the Endangered Species Act of 1973, as amended (Act). We are proposing to designate 3,089 acres (ac) (1,250 hectares (ha) as critical habitat for Fender's blue butterfly, 724 ac (293 ha) as critical habitat for *L. sulphureus* ssp. *kincaidii*, and 718 ac (291 ha) as critical habitat for *E. decumbens* var. *decumbens*. The proposed critical habitat is located in Polk, Benton, Yamhill, Lane, Marion, Linn, and Douglas Counties, Oregon, and Lewis County, Washington.

DATES: We will accept comments from all interested parties until January 3, 2006. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by December 19, 2005.

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 Kemper McMaster, Field Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266.

(2) You may hand-deliver written comments to our Office, at the above address.

(3) You may send comments by electronic mail (e-mail) to *fw1willamettech@fws.gov*. Please see the Public Comments Solicited section below for file format and other information about electronic filing.

(4) You may fax your comments to 503/231–6195.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours (see address above) (telephone 503/231–6179).

FOR FURTHER INFORMATION CONTACT: Kemper McMaster, Field Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266 (telephone 503/231–6179; facsimile 503/231–6195).

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 proposed rule are hereby solicited. Comments particularly are 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 due to designation;

(2) Specific information on the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* and its habitat, and which habitat or habitat components (i.e., physical and biological features) are essential to the conservation such as soil moisture gradient, microsite preferences, light requirements;

(3) Specific information on the amount and distribution of the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* habitat; what areas should be included in the designations that were occupied at the time of listing and contain the features that are essential to the conservation of the species and why; specific information is also sought on what areas that were not occupied at the time of listing are essential to the conservation of the species and why;

(4) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat; we specifically solicit information including:

(a) The benefits provided by a management plan; specifically describe how the plan addresses each primary constituent element (PCE) in the absence of designated critical habitat; describe conservation benefits to Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* or *Erigeron decumbens* var. *decumbens*; include citations that point to the certainity of implementation of those aspects of the management plans (see the Special Management Considerations or Protections section below);

(b) The benefits of excluding from the critical habitat designation the areas covered by the plan; we are especially interested in knowing how partnerships may be positively or negatively affected by a designation, or through exclusion from critical habitat, and costs associated with designation;

(c) With specific reference to the recent amendments to sections 4(a)(3) and 4(b)(2) of the Act, we request information from the Department of Defense to assist the Secretary of the Interior in making a determination as to whether to exclude critical habitat on lands administered by or under the control of the Department of Defense based on the benefit of an Integrated Natural Resources Management Plan (INRMP) to the conservation of the species;

(5) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities; and

(6) 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 *fw1willamettech@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''RIN 1018–AT91'' 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 (see **ADDRESSES**). Please note that the Internet address *fw1willamettech@fws.gov* will be unavailable 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 comments. 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 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 470 species or 37.5 percent of the 1,253 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat.

We address the habitat needs of all 1,253 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 conservation for many species.

We note, however, that a recent Ninth 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. In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This critical habitat designation does not use the invalidated regulation in our consideration of critical habitat's benefits. The Service will carefully manage consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate analysis has been conducted that is informed by the Director's guidelines.

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

It is our intent to discuss those topics directly relevant to the designation of critical habitat in this proposed rule. For more information on the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens*, refer to the final listing rule published in the **Federal Register** on January 25, 2000 (65 FR 3875). Provided below is a general overview of the habitat requirements and distribution of Fender's blue butterfly, *L. sulphureus* ssp. *kincaidii* and *E. decumbens* var. *decumbens*.

These species occur in wet prairie, upland prairie, and oak/savanna habitats (collectively referred to as prairie habitat) which were once widely distributed across western Oregon and southwestern Washington (Clark 1996; Schultz *et al.* 2003; Wilson *et al.* 2003). Various descriptions of prairie habitats have been published over the years and they usually vary in their division of communities and the dominant species present in each community (Jackson 1996). For the purposes of this document we describe two habitat types, wet and upland prairie, and we define these by describing the plant communities reported co-occuring with the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens*. Upland prairie (including oak savanna) habitat is characterized by short-grass stature which is dominated by native bunch grasses and forbs, such as: *Calochortus tolmiei* (Cat's ear, Tolmie star-tulip), *Danthonia californica* (California oatgrass), *Eriophyllum lanatum* (common woolly sunflower, Oregon

sunshine), *Festuca romeri* (Romer's fescue), and *Fragaria virginiana* (Virginia strawberry) (Wilson 1998a; Schultz *et al.* 2003; Wilson *et al.* 2003). Wet prairies are seasonally flooded ecosystems occurring on both poorly drained soil types and well-drained soils where shallow bedrock impedes drainage (Wilson 1998b). Although wet prairie soils dry-out during typical summer droughts, they have soils with hydric characteristics that support facultative or obligate wetland plant species (Wilson 1998b) such as, *Anthoxanthum odoratum* (sweet vernalgrass), *Deschampsia caespitosa* (tufted hairgrass), *Eriophyllum lanatum*, and *Lomatium bradshawii* (Bradshaw's lomatium) (Clark *et al.* 1993; Wilson 1998b). The Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens*, occur in prairie remnants with undisturbed (not disturbed in the last 10 years) subsoils (the layer of soil between the topsoil and bedrock) (Kagen and Yamamota 1987; USFWS 2003a; USFWS 2004a, 2004b).

Prairie habitat has been reduced to less than one percent of pre-settlement distribution (Hammond and Wilson 1993), making the ecosystem among the most endangered in the United States (Noss *et al.* 1995). The decline in these habitats and their increased fragmentation have led to the decline of many native prairie plants and animals (Wilson 1998a, 1998b). The most noteworthy decline was that of Fender's blue butterfly, which was thought to be extinct for over 50 years before being rediscovered in Benton County, Oregon in the late 1980s (Schultz *et al.* 2003; Wilson *et al.* 2003).

Historically, prairie plant species, such as *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens*, were scattered across the landscape in patches which were relatively close to each other (Jackson 1996; Schultz 1998; Severns 2003a). Today, few prairie habitat patches remain and most are threatened to varying degrees by the spread of exotic grasses and shrubs, and succession to forest (Hammond and Wilson 1993; Schultz *et al.* 2003; Wilson *et al.* 2003). As a result, many of the remaining populations of Fender's blue butterfly, *L. sulphureus* ssp. *kincaidii*, and *E. decumbens* var. *decumbens* are extremely small and isolated, further threatening the long-term persistence of these species (Jackson 1996; Schultz 1998; Schultz and Hammond 2003; Severns 2003a; Schultz *et al.* 2003).

Fender's blue butterfly and Lupinus sulphureus ssp. kincaidii

The Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* populations occur on early seral (one stage in a sequential progression) upland prairie habitat with plant species including, but not limited to: *Achillea millefolium* (common yarrow), *Aster hallii* (Hall's aster), *Brodiaea congesta* (Brodiaea), *Bromus carinatus* (California brome), *Calochortus tolmiei*, *Carex tumulicola* (splitawn sedge), *Cirsium callilepis* (fewleaf thistle), *Danthonia californica*, *Elymus glaucus* (blue wildrye), *Eriophyllum lanatum*, *Festuca californica* (California fescue), *Festuca roemeri*, *Fragaria virginiana*, *Geranium oreganum* (Oregon geranium), *Grindelia integrifolia* (gumweed), *Lomatium nudicaule* (barestemmed desert parsley), *Luzula campestris* (wood rush), *Prunella vulgaris* (common selfheal), *Sanicula crassicaulis* (Pacific blacksnakeroot), *Sidalcea virgata* (rose checkermallow and dwarf checkerbloom), *Silene hookeri* (Hooker's silene), and *Wyethia angustifolia* (California compassplant). Many of these associated species are considered indicators for this habitat type (Schultz and Dlugosch 1999; Schultz 2001; Schultz *et al.* 2003; Wilson *et al.* 2003).

L. sulphureus ssp. *kincaidii* habitat is described as prairie or open areas, and this species is unable to survive prolonged periods of shade (Wilson *et al.* 2003). This plant is a low-growing herbaceous perennial with large individual plant clones (Wilson *et al.* 2003). Excavation efforts indicate that leaves 33 feet (10 m) or more apart can be interconnected by below ground stems, and the species is long-lived with lateral growth rates suggesting that some plants could be several decades old (Wilson *et al.* 2003). *L. sulphureus* ssp. *kincaidii* clones are scattered in patches across the prairie habitat and intermixed with several other prairie-associated plant species.

Lupinus sulphureus ssp. *kincaidii* is the primary host plant for the Fender's blue butterfly and is utilized by the butterfly as a larval food source and for oviposition (laying eggs) (Schultz *et al.* 2003; Wilson *et al.* 2003). The Fender's blue butterfly habitat requirements include a larval host plant, native forbs for adult nectar sources, and a mixture of native grasses that help maintain the short-grass stature of the upland prairies (Wilson *et al.* 1997; Schultz 2001) essential to the survival of these shade intolerant species (Wilson *et al.* 2003). Full sun conditions are necessary for adult butterflies to seek out nectar, search for a mate and disperse. The Fender's blue butterfly appears to have limited dispersal ability with most dispersing adults likely remaining within 1.2 miles (2 km) of their natal lupine patch (Schultz 1998). The maximum dispersal distance reported for the Fender's blue butterfly is 3.1 to 3.7 miles (5 to 6 km) (Hammond and Wilson 1992; Schultz 1998).

To simplify mapping efforts, Fender's blue butterfly occupancy has typically been recorded by simply reporting the location of occupied lupine patches (Schultz and Dlugosch 1999; Schultz 2001; Schultz *et al.* 2003). Adult butterflies utilize a variety of prairie species in addition to the lupine habitat. Species occurrence information reported in the final listing rule was calculated by reporting the estimated area covered by the lupine, which considerably under-estimates the range of Fender's blue butterfly adults. For this proposed critical habitat designation, we have identified and report all known prairie habitat supporting Fender's blue butterfly populations, regardless of the presence or absence of lupine.

Fender's blue butterfly is currently found in 16 isolated populations comprising a total of approximately 3,388 ac (1,370 ha) of upland prairie habitat. The prairie habitat currently supporting this species is found in Yamhill, Polk, Benton, and Lane Counties, Oregon. *Lupinus sulphureus* ssp. *kincaidii* occurs in 76 upland prairie/savanna habitat patches, totaling approximately 1,150 ac (465 ha). The prairie habitat supporting this species is scattered across six counties (Lewis County, Washington, and Yamhill, Polk, Benton, Lane, and Douglas Counties, Oregon).

Erigeron decumbens var. decumbens

Erigeron decumbens var. *decumbens* grows in wet prairies occurring on relatively impermeable soils with plant species including, but not limited to: *Anthoxanthum odoratum*, *Aster curtus* (white-top aster), *Aster hallii* (Hall's aster), *Brodiaea coronaria* (crown brodiaea), *Camassia quamash* (common camas), *Danthonia californica* (California oatgrass), *Deschampsia caespitosa*, *Festuca arundinacea* (tall fescue), *Grindelia integrifolia* (gumweed), *Holcus lanatus* (velvet grass), *Horkelia congesta* (Sierra horkelia), *Saxifraga integrifolia* (bog saxifrag), *Lomatium bradshawii*, *Luzula campestris* (wood rush), *Panicum capillare* (witchgrass), *Potentilla gracilis* (slender cinquefoil), *Prunella vulgaris* (common selfheal) and *Sisyrinchium angustifolium* (narrowleaf blue-eyed grass) (Clark *et al.* 1993; Clark *et al.*

1995a, 1995b; Jackson 1996; Clark 2000). *Erigeron decumbens* var. *decumbens* also grows in upland prairies as previously described (Clark *et al.* 1993; Clark *et al.* 1995a; Jackson 1996; Clark 2000).

Erigeron decumbens var. *decumbens* typically occurs where woody cover is nearly absent and where herbaceous vegetation cover is low in stature relative to the surrounding areas (Clark *et al.* 1993). *Erigeron decumbens* var. *decumbens* is a low growing (6–24 inches (15–60 cm) herbaceous perennial occurring in clumps of genetically identical ramets (i.e., a vegetatively reproduced copy of the parent plant) that are typically patchy in distribution across the prairie habitat (Clark *et al.* 1993). These plants are intermixed with several associated species which are considered indicator species for the prairie habitat (Clark *et al.* 1993).

Erigeron decumbens var. *decumbens* occurs in 32 wet and upland prairie patches, totaling 1,193 ac (483 ha). This species currently occurs in Benton, Lane, Linn, Marion, and Polk Counties, Oregon.

The historic wide spread distribution of continuous prairie habitat allowed the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* to function as metapopulations (Jackson 1996; Schultz 1998; Schultz *et al.* 2003; and Severns 2003a). Currently, populations are mostly isolated from neighboring populations and interactions between them are thought to be rare events (Jackson 1996; Schultz 1998; Severns 2003a). Recovery of all three species will require reestablishment of functioning habitat networks that support multiple, connected populations (Kaye, in litt., 2005; Schultz *et al.* 2003; Severns 2003a). In this document we refer to these functioning habitat networks as metapopulations.

Previous Federal Actions

The Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* were listed on January 25, 2000. For more information on previous Federal actions concerning the Fender's blue butterfly, *L. sulphureus* ssp. *kincaidii* and *E. decumbens* var. *decumbens*, refer to the final listing rule published in the **Federal Register** on January 25, 2000 (65 FR 3875.)

On April 23, 2003, a complaint was filed against the Service (CV 03 513 JE (D. Or.)) for failure to designate critical habitat for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens*. In December 2003, a settlement agreement resulted in a schedule for the Service to submit a proposed critical habitat rule to the **Federal Register** by October 15, 2005, and a final rule by October 15, 2006.

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) 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 within the area occupied by the species at the time of listing must first have features that are ''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)).

Habitat occupied at the time of listing 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). Specific areas outside the geographical area occupied by the species at the time it is listed may be designated as critical habitat, in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such features are essential for the conservation of 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 (Pub. 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 is generally 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. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. 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. Most populations of Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* have not been studied well enough to determine how to restore functioning metapopulations in these highly fragmented prairie remnants. Although it is generally understood that recovery of remaining populations will involve expanding existing populations,

increasing connectivity, and/or improving habitat quality (Clark *et al.* 1995b; Schultz *et al.* 2003; Severns 2003a; Wilson *et al.* 2003), additional information is needed to determine the most appropriate restoration design (Schultz *et al.* in prep.). Since each of the remaining populations occur in a unique habitat setting, habitat analyses will likely need to be completed to determine which lands are suitable for expanding populations, increasing connectivity, and reestablishing functioning metapopulations. For many populations of Fender's blue butterfly, *L. sulphureus* ssp. *kincaidii* and *E. decumbens* var. *decumbens*, we do not have the information necessary to specifically identify additional areas needed to increase connectivity between populations and establish larger metapopulations. If new information becomes available identifying additional features essential to the conservation of these species, we will reevaluate the critical habitat designation.

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, we use the best scientific and commercial data available in determining areas that contain the features that are essential to the conservation of the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens*.

We have reviewed available information that pertains to the habitat requirements of these species and evaluated all known species locations using data from the following sources: Spatial data for known species locations from the Oregon Natural Heritage Information Center (ORNHIC 2004), Washington Natural Heritage Program (WNHP 2005), U.S. Army Corps of Engineers (Corps 2004), and Bureau of Land Management (BLM 2005); United States Geological Survey (USGS 2000) 1:24,000 scale 3.75 digital orthophotographic quarter quadrangle images; recent biological surveys and reports; site-specific habitat evaluations (USFWS 2003a; USFWS 2004a, 2004b, 2004e); data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles and presented in academic theses or reports; recovery team meeting notes; and discussions with species experts. We are not proposing to designate areas outside the geographic area occupied by the species.

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. We are requesting specific information from the public on the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* and its habitat, and which habitat or habitat components (i.e., physical and biological features) are essential to the conservation and why.

The specific primary constituent elements required for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* are derived from the biological needs of these species as described in the Background section of this proposal with specific requirements described below.

Space for Individual and Population Growth and Normal Behavior

Fender's blue butterfly

Historically, the Willamette Valley was a mosaic of upland and wetland prairie, with lupine patches rarely more than 0.3 miles (0.5 km) apart, providing a high probability that the Fender's blue butterfly could disperse between patches (Schultz 1998). Habitat fragmentation has isolated the remaining populations of Fender's blue butterfly to such an extent that dispersal among suitable habitat patches is now likely a rare event (Schultz 1998) which increases the risk of inbreeding depression (Schultz *et al.* 2003). The rarity of host lupine patches and habitat fragmentation are the major ecological factors limiting reproduction, dispersal, and subsequent colonization of new habitat (Hammond and Wilson 1992, 1993; Hammond 1994; Schultz 1997a; Schultz and Dlugosch 1999).

Conservation recommendations for recovering the Fender's blue butterfly include having enough high quality habitat to maintain viable populations across the range of the species (Schultz *et al.* 2003). This will require habitat restoration to create new sites, expanding the size of existing sites and creating habitat networks that connect isolated populations (Schultz *et al.* 2003). The largest remaining Fender's blue butterfly populations generally occur in the largest, most connected prairie remnants currently supporting the species (USFWS 2004a, 2004e). Schultz *et al.* (2003) found that under current conditions, even these largest Fender's blue butterfly populations have a poor chance of survival over the next 100 years.

The three largest known butterfly populations occur on prairie remnants with estimated areas of 251 ac (102 ha), 55 ac (22 ha), and 31 ac (13 ha) (Hammond 2004; Fitzpatrick 2005; USFWS 2004a, 2004e, 2005), respectively. Although the prairie habitat supporting these populations is threatened to varying degrees by invasive species and woody succession, it also appears to have the highest diversity of native plant species. Large habitat patches tend to support higher native species diversity (Noss and Cooperrider 1994) and the Fender's blue butterfly depends on a diversity of native plant species for survival (Wilson *et al.* 1997).

To promote successful dispersal between lupine patches and reestablish functioning metapopulations, Fender's blue butterly will likely require stepping-stones of lupine patches that are close enough together for dispersing butterflies to have a high probability of finding them (Schultz 1998). This conservation reserve strategy is superior to narrow linear corridors because Fender's blue butterfly flight patterns into non-lupine habitat make it unlikely

they would stay in a narrow corridor (Schultz 1998). Reestablishing stepping stones of lupine habitat between existing populations increases the likelihood that dispersing individuals will move from one large lupine patch to the next (Schultz 1998). Lupine patches should be less than 0.6 mile (1 km) from their nearest neighbor (Schultz 1998; Schultz 2001; Schultz and Crone 2005) to restore functioning metapopulations for the Fender's blue butterfly and ensure the long-term persistence of this species (Schultz *et al.* 2003).

Recovery of the Fender's blue butterfly will require ten functioning metapopulations that are distributed across the range of the species. All of the reserve metapopulations will need to consistently maintain a sufficient number of individuals and a minimum growth rate for 10–15 consecutive years. In addition to the above draft criteria, three of the metapopulations will need to be larger (larger areal extent), functioning metapopulations (Schultz *et al.*, in litt., 2005). The three areas with the highest likelihood of fostering large, functioning metapopulations are lands owned by The Nature Conservancy (TNC) in Eugene, Oregon, the Baskett Slough National Wildlife Refuge populations, and the areas currently supporting the Wren, Oregon, populations.

Lupinus sulphureus ssp. kincaidii

For many organisms that are patchily distributed, the minimum viable population will often depend on both the occupied and surrounding unoccupied habitat that is protected and managed for the species (Nunny and Campbell 1993). Plant populations often occupy only small regions of the available habitat at any one period, and this pattern is very relevant to their conservation (Menges 1991). The habitat between plant patches is often utilized for seedling establishment (Wilson 1998b) and, as such, may be necessary for the long-term perseverance of the species (Nunny and Campbell 1993).

Native upland prairies are low-growing plant communities dominated by bunchgrasses with open spaces occurring between plants (Wilson 1998a, 1998b). Spaces between bunchgrasses remain available for the vegetative spread of lupine and seedling establishment necessary for expanding population size and increasing population viability. In addition to providing space for population growth, larger prairie habitats provide opportunity for population expansion because the native grasses and forbs maintain the short-grass prairie stature and provide the full sun conditions necessary for the species to grow and expand into surrounding habitat (Wilson 1998a).

Lupinus sulphureus ssp. *kincaidii* populations exhibit typical signs of inbreeding depression (a process that weakens plant fitness through repeated generations of inbreeding), such as low seed production, which is attributed to the small size and isolated nature of the species' current distribution (Severns 2003a; Wilson *et al.* 2003). Insect outcrossing pollination (the transfer of pollen from the flower of one plant to the flower of another plant of the same species) has been documented as necessary for successful seed production in *L. sulphureus* ssp. *kincaidii* (Wilson *et al.* 2003). Since *L. sulphureus* ssp. *kincaidii* is a long lived perennial that grows to more than 20 m in diameter, and observations suggest that lupine patches are either one individual or a few closely related individuals (Severns 2003a), successful outcrossing pollination will require large populations with many individuals or multiple plant patches of unrelated individuals that are functionally connected (i.e., they are in close enough proximity that pollinators will regularly move between the patches). The number of *L. sulphureus* ssp. *kincaidii* patches occurring within prairie remnants has been positively correlated with increased seed production, likely because larger populations have a higher density of floral displays and attract more pollinators (Severns 2003a). Since population size appears to be important for visibility to pollinators and the successful reproduction of *L. sulphureus* ssp. *kincaidii*, increasing the size of existing populations will play a role in recovering this species (Severns 2003a).

Habitat management recommendations for the conservation and recovery of *Lupinus sulphureus* ssp. *kincaidii* include expanding the size of existing populations by augmenting them with individuals from other plant populations (Severns 2003a). The prairie habitat occurring between existing lupine patches will be necessary to provide space for augmentations which is expected to reduce the effects of inbreeding depression. Smaller distances between plant patches increase the likelihood of outcrossing as insect pollinators more readily travel among nearby patches to transfer pollen between individual plants. The stepping-stone reserve design recommended for Fender's blue butterfly will also benefit *L. sulphureus* ssp. *kincaidii* by increasing opportunity for pollen transfer between existing plant patches and allow current small populations to function together as larger ones (Severns 2003a; Wilson *et al.* 2003).

Draft recovery criteria for the *Lupinus sulphureus* ssp. *kincaidii* include having reserves established across the historic range of the species with populations larger than 0.25 ac (0.1 ha) of lupine cover and within 5 miles (8 km) of neighboring populations (Gisler *et al.*, in litt., 2005). An area-based measurement is used for minimum patch size due to the difficulty of counting individual plants of this clonal species. The 5 mile (8 km) criterion is based on the estimated pollinating distance of the honeybee (*Apis mellifera*), which is the primary pollinator of this species (Gisler *et al.*, in litt., 2005). These criteria are expected to promote larger functioning metapopulations, with increased population sizes and genetic diversity, which in turn, promotes long-term population viability and species conservation.

Erigeron decumbens var. decumbens

Erigeron decumbens var. *decumbens* populations are currently vulnerable to inbreeding depression throughout their range because they occur in small, isolated habitat patches (Jackson 1996). Jackson (1996) documents that conservation plans for the wet prairie habitat must emphasize connections, corridors, and large areas of contiguous habitat. Clark *et al.* (1993) identified habitats critical for the conservation of *E. decumbens* var. *decumbens* and recommends protecting sites harboring large populations of native plants, prairie habitat providing physical links between *E. decumbens* var. *decumbens* populations, and potential sites for restoration in order to reduce the current threats to survival (Clark *et al.* 1993).

E. decumbens var. *decumbens* populations are typically distributed in clumps scattered across the prairie habitat and dispersed among other prairie indicator species (Clark *et al.* 1993). Larger prairie remnants are more likely to provide the conditions necessary to support population growth because the native species composition maintains the light and composition necessary for this species to persist and expand. Conservation measures documented as necessary for maintaining and increasing the few remaining populations of *E. decumbens* var. *decumbens* include promoting conditions for natural regeneration as well as possibly augmenting small populations with propagated

individuals (Clark *et al.* 1995b). Open spaces between bunch grasses allow *E. decumbens* var. *decumbens* to expand within a habitat patch and larger prairie remnants provide the area necessary to use propagated individuals for population augmentation.

Draft recovery criteria for the *Erigeron decumbens* var. *decumbens* include the establishment of reserves comprised of populations larger than 200 plants and within 5 miles (8 km) of neighboring populations, across the historic range of the species (Robinson *et al.*, in litt., 2005). *E. decumbens* var. *decumbens* population estimates are typically reported by counting plant clumps as individual plants and therefore, a minimum number of individuals has been identified in the draft recovery criteria (Robinson *et al.*, in litt., 2005).

Food

The Fender's blue butterfly uses *Lupinus sulphureus* ssp. *kincaidii*, *L. arbustus* (spur lupine) and *L. albicaulis* (sickle-keeled lupine) as larval host plants. Adult Fender's blue butterflies require several forbs for nectar (Schultz and Dlugosch 1999; Schultz *et al.* 2003). Specific adult nectar sources include: *Allium acuminatum* (tapertip onion), *Allium amplectans* (narrowleaf onion), *Calochortus tolmiei* (Tolmie's mariposa lily), *Eriophyllum lanatum* (woolly sunflower), *Sidalcea campestris* (Meadow checkermallow), *Sidalcea virgata* (rose checker-mallow), *Vicia sativa* (common vetch) and *V. hirsuta* (tiny vetch). These exotic vetches (V. sativa and V. hirsuta) are heavily used at many sites but they are considered a lower quality source of nectar (Schultz and Dlugosch 1999).

Light

As previously described, all three species are early seral and occur in open areas. Willamette Valley grasslands have been described as a mixture of wet and upland prairie, and oak/savanna habitat having a relatively open canopy cover (Altman *et al.* 2001; Chappell *et al.* 2001). These open areas were historically maintained by the indigenous people of the Willamette Valley who seasonally burned the land to facilitate hunting and gathering of food (Clark *et al.* 1995b; Clark 2000; Jackson 1996; Schultz *et al.* 2003; Wilson *et al.* 2003). The fires prevented the widespread abundance of woody species and maintained the openness needed for early seral species to persist (Jackson 1996; Schultz *et al.* 2003; Wilson *et al.* 2003). Change in this historic disturbance regime has allowed shrubs and trees to invade many prairies and oak/savannas.

Populations of Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* historically occurring in the oak/savannas were probably the first to be lost to succession and development, with most of the remaining populations found in the valley floor prairies. *L. sulphureus* ssp. *kincaidii* and many of the Fender's blue butterfly nectar sources do not tolerate the decrease in available light that results from increased canopy closure as prairies gradually grow into woodlands in the absence of disturbance (Schultz *et al.* 2003). *Erigeron decumbens* var. *decumbens* typically occurs where woody cover is nearly absent and where herbaceous vegetation cover is low in stature relative to the surrounding areas (Clark *et al.* 1993).

Native Willamette Valley prairies are predominantly low-stature communities with most plant foliage occurring within 8 inches (20 cm) of the soil, but with flowering stalks of some of the grasses reaching up to 59 inches (150 cm) in height (Wilson 1998a, 1998b). Maintaining the stature of the prairie habitat that surrounds the patches of *Lupinus sulphureus* ssp. *kincaidii* and *E. decumbens* var. *decumbens* is essential for the conservation of not only the plants but also the Fender's blue butterfly (Schultz *et al.* 2003). The butterfly is more vigorous in the full sun of open habitats which provide conditions that promote nectaring and ovipositioning (Schultz *et al.* 2003).

Populations of *Lupinus sulphureus* ssp. *kincaidii* occurring in Douglas County, Oregon, have been documented occurring in atypical habitat for the species (Barnes 2004). The Douglas County populations are in wooded areas with canopy cover ranging from 50 to 80 percent (Barnes 2004) and dominated by species such as: *Arbutus menziesii* (Pacific madrone), *Arctostaphylos columbiana* (hairy manzanita), *Calocedrus decurrens* (incense cedar), *Calochortus tolmiei* (Cat's ear, Tolmie star-tulip), *Canadanthus modestus* (giant mountain aster), *Ceanothus cuneatusa* (buckbrush), *Cerastium arvense* (field chickweed), *Cynosurus echinatus* (bristly dogstail grass), *Daucus carota* (Queen Anne's Lace, wild carrot), *Dichelostemma capitatum* (bluedicks), *Festuca californica* (California fescue), *Festuca roemeri* (Roemer's fescue), *Fragaria vesca* (woodland strawberry), *Hieracium albiflorum* (white hawkweed), *Holodiscus discolor* (oceanspray), *Lathyrus polyphyllus* (leafy pea), *Lonicera hispidula* (pink honeysuckle), *Pinus ponderosa* (ponderosa pine), *Pseudotsuga menziesii* (Douglas fir, Doug fir), *Quercus kelloggii* (California black oak), *Rubus ursinus* (California blackberry), *Sanicula crassicaulis* (Pacific blacksnakeroot), *Symphoricarpos albus* (snowberry), *Torilis arvensis* (spreading hedgeparsley), *Toxicodendron diversilobum* (poison oak), *Vicia americana* (American vetch), and *Whipplea modesta* (common whipplea).

Moisture

Plant communities in prairie ecosystems vary mainly due to differences in moisture and these moisture differences are a result of elevation, slope, and soil permeability (Jackson 1996). The Willamette Valley prairies have been categorized into two habitat types, wet prairie and upland prairie (Jackson 1996). The wet prairie habitat is defined as areas of low relief, with poor drainage and hydric, clayey soils (Jackson 1996). This habitat type is dominated by bunchgrasses, most predominately *Deschampsia caespitosa* (Clark *et al.* 1993; Jackson 1996). Jackson (1996) describes the term upland prairie as ''misleading'' because this habitat largely occurs on the valley floor. A few upland prairie habitat patches occur on colluvium upland soils (Jackson 1996), but many occur on soils not considered upland, such as terraces, alluvium, and even floodplain soils (Clark *et al.* 1993; Jackson 1996; Wilson *et al.* 2003). Although many of the habitat patches supporting the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* occur on the valley floor, they have been characterized as ''upland prairies'' because of their drier conditions which are attributed to better draining soils or topography (Jackson 1996). This upland prairie habitat is typically characterized by the vegetation that thrives in these well-drained conditions (associated species previously identified) (Jackson 1996).

Erigeron decumbens var. *decumbens* grows in both wet and upland prairies. The populations occurring in wet prairies tend to occur in the driest portions of the wet prairie habitat. *E. decumbens* var. *decumbens* prefers the driest of habitats in which D. caespitosa can grow, and thus where *D. caespitosa* is sparse (Clark *et al.* 1993). *Lupinus sulphureus* ssp. *kincaidii* populations occur predominately in upland prairie habitat with a few occurring in the transitional areas between wet and upland prairie habitats. The Fender's blue butterfly largely occurs in upland prairies, however several adult nectar sources occur in wet prairies and are utilized by the butterfly when wet

prairie patches are adjacent to lupine patches.

Reproduction

Fender's blue butterfly

Adult Fender's blue butterflies emerge in May and females lay their eggs on the underside of lupine leaves. The butterfly uses three lupine species as host plants for oviposition. A few weeks after oviposition, the eggs hatch and the larvae eat lupine leaves for a few weeks until the lupines senesce. After lupine senescence, the larvae enter an extended diapause which lasts until the following March. When the lupine plants resurface, the larvae emerge from the soil litter and begin eating the young lupine leaves until they pupate in mid-April (Schultz *et al.* 2003). Adult females lay approximately 350 eggs (Schultz *et al.* 2003) over their estimated 15-day lifespan. Of these eggs, approximately 1.5 will survive to adulthood, indicating that female fecundity is very low (Schultz 1998; Schultz *et al.* 2003).

Native prairie composition, including short-stature grasses, provides the full sun conditions required for *Lupinus sulphureus* ssp. *kincaidii* plants to produce an abundance of leaves for Fender's blue butterfly to lay eggs upon, whereas invasive species often cover the lupine leaves making it difficult for the butterfly to oviposition. Native nectar sources have been documented as higher quality adult food sources and butterfly populations dependent on low quality exotic vetches, may spend more of their limited adult flight time nectaring, and less time ovipositioning (Schultz and Dlugosch 1999).

Schultz and Crone (2001) found that Fender's blue butterfly population patterns are influenced by habitat patch size via residence time of female butterflies, where butterflies emigrate from smaller patches more quickly than they do from larger patches. This directly influences the numbers and spatial distribution of eggs, and therefore the future number of butterflies. Because Fender's blue butterflies only live for approximately two weeks, a change in residence time by a day markedly influences the distribution of eggs.

Lupinus sulphureus ssp. *kincaidii*

Lupinus sulphureus ssp. *kincaidii* flowers possess a pump or piston arrangement for cross-pollination by insects, as is common in other lupines (Knuth 1906; Kaye 1999). Pollination of *L. sulphureus* ssp. *kincaidii* appears to be carried out by bees visiting the flowers and the relatively small flowers attract only small bees (Wilson *et al.* 2003). Several bee species have been documented commonly visiting *L. sulphureus* ssp. *kincaidii* flowers, such as small bumblebees (*Bombus mixtus* and *B. californicus*), and the European honey bee (*Apis mellifera*). As described in Wilson *et al.* (2003), insect pollination appears to be critical for successful seed production in *L. sulphureus* ssp. *kincaidii*. The maturation of the flowers of *L. sulphureus* ssp. *kincaidii* promotes outcrossing pollination because of the way they mature from the bottom of the inflorescence to the top (Wilson *et al.* 2003).

Studies indicate that inbreeding depression may limit the seed set and seed fitness of smaller lupine populations (Severns 2003a; Wilson *et al.* 2003). Conserving *Lupinus sulphureus* ssp. *kincaidii* will likely require the outcrossing of populations by planting new individuals from different sources near existing populations and increasing pollinator connectivity between existing populations (Severns 2003a).

Erigeron decumbens var. *decumbens*

This species spreads vegetatively via rhizomes over short distances (about 4 inches (10 cm)) (Kaye 2000) and the plants often grow in clumps, making it difficult to distinguish individuals. Sexual reproduction is facilitated by insect pollination. Pollinators include species such as the field crescent butterfly (*Phyciodes campestris*), sweat bees (Halictidae spp.), and a syrphid fly (*Toxomerous occidentalis*) (Jackson 1996). Seeds are dispersed by wind but over very short distances (Clark *et al.* 1993). Research indicates that scarification stimulates germination but the mechanism for seed coat scarification (scoring of the seed coat) in the wild is unknown (Clark *et al.* 1995b). Germination of *Erigeron decumbens* var. *decumbens* seeds occurs mostly in April and May (Clark *et al.* 1995b). Flowering is concentrated in June and early July, and seeds are dispersed in mid to late July (Ingersoll *et al.* 1995).

Jackson (1996) reports that remaining populations of *Erigeron decumbens* var. *decumbens* may be experiencing reproductive difficulties because they are extremely small and isolated from one another. Gene flow between individuals of a sexually-reproducing species is requisite for their persistence (Jackson 1996). Research results indicate that the *E. decumbens* var. *decumbens* is at risk of inbreeding depression (Jackson 1996). To reduce this risk and to conserve the species, it will likely be necessary to increase the number of habitat patches located in close proximity to one another such that functioning metapopulations are restored. This population arrangement provides increased opportunity for insects to carry pollen between individual plants and increases the likelihood of reproductive success of *E. decumbens* var. *decumbens*.

Areas Representative of the Historic Geographical and Ecological Distributions of a Species

Fender's blue butterfly

Conservation recommendations for the Fender's blue butterfly include having a reserve design with a minimum of two populations for each occupied county (eight total) so that a local back-up is always available in case of site extirpations (Hammond and Wilson 1993). Draft recovery criteria for the Fender's blue butterfly include having ten Fender's blue butterfly metapopulations distributed across the historic range of the species before considering delisting (Schultz *et al.*, in litt., 2005). By maintaining viable metapopulations across the species' range, the distribution would be wide enough to buffer the species from catastrophes that may occur in portions of its range (Schultz *et al.* 2003).

Recommendations for reserve design criteria for this species include preserving populations occurring under unique conditions as distinct ecological segregates (Hammond and Wilson 1993). Therefore, populations occurring in unique habitat conditions should be conserved across the range of the species, with a reserve design that provides ''back-up'' populations occurring in the same unique habitat conditions. For example, a few unique Fender's blue butterfly populations occur on valley hillsides that appear to be stable climax grasslands due to the presence of deep, fine-textured, self-mulching soils or xeric lithosols, while the vast majority of remaining sites occur on the valley floor under different habitat conditions (Hammond and Wilson 1993).

Lupinus sulphureus ssp. *kincaidii*

Lupinus sulphureus ssp. *kincaidii* populations in Douglas County, Oregon and Lewis County, Washington, represent the furthest southern and northern extent of the current range, respectively. These populations are highly disjunct and isolated from the Willamette Valley populations with approximately 81 miles (131 km) between the northernmost Willamette Valley population to the Lewis County,

Washington population, and approximately 54 miles (87 km) separating Oregon's south Willamette Valley populations from the Douglas County populations.

The primary habitat for *Lupinus sulphureus* ssp. *kincaidii* is open upland prairie and meadow edges, often near oak trees with a relatively open canopy cover. Most of the Douglas County, Oregon, populations appear to tolerate more shaded habitat conditions with canopy cover of 50 to 80 percent (Barnes 2004). These plants are found in wooded areas dominated by *Pseudotsuga menziesii* (Douglas-fir), *Arbutus menziesii* (Pacific madrone), and other trees and shrubs (Barnes 2004). Because these populations represent the southern-most extent of this species' range, they may be adapted to tolerate more extreme habitat and/or other environmental conditions. Therefore, conservation of *L. sulphureus* ssp. *kincaidii* populations across their current range will require recovery units in Lewis County, Washington and Douglas County, Oregon, in addition to recovery units in the Willamette Valley, Oregon (Gisler *et al.*, in litt., 2005).

Erigeron decumbens var. decumbens

Erigeron decumbens var. *decumbens* occurs on wetland prairie dominated by *Deschampsia caespitosa*. It also occurs on a few upland prairie sites characterized by a mix of native and non-native bunchgrasses (Jackson 1996; Clark 2000). Since this species occurs in both wet prairie and upland prairie habitat, conservation of representative populations in both of these habitat types is essential to the conservation of this species. As previously described, the long-term persistence of small populations will likely depend on augmentation with propagated individuals (Clark *et al.* 1995b). Since there are very few surviving populations of *E. decumbens* var. *decumbens* and because they occur in both wet and upland prairie habitats, population augmentations must be sensitive to geographic variation in genotype and phynotype.

Although it may be possible to reestablish functioning metapopulations across the range of the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens*, it is highly unlikely that these metapopulations will ever be reconnected because of the distance between existing populations in an extremely fragmented landscape. Each metapopulation will therefore need to be independently viable, supporting multiple populations to reduce the risk of localized extinction.

With so few remaining populations of each of these species, losing any one of these populations through a natural or human-caused event will measurably increase the likelihood of extinction. For example, an accidental spraying of insecticide and/or herbicide on a Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* population, could eliminate the entire population of one or both species. In December 2004, one of the core Fender's blue butterfly populations was significantly damaged by a herd of pigs that gained access into and rooted up a large area of occupied prairie habitat. Although the likelihood of such an event is variable and difficult to predict, the extant small populations are at high risk of extirpation if such an event were to occur.

Primary Constituents Elements for the Fender's blue butterfly, Lupinus sulphureus ssp. kincaidii and Erigeron decumbens var. decumbens

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain life history functions of the species, we have determined that the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens's* primary constituent elements (PCEs) are:

The PCEs for Fender's blue butterfly are:

(1) Early seral upland prairie, oak savanna habitat with undisturbed subsoils that provides a mosaic of low growing grasses and forbs, and an absence of dense canopy vegetation allowing access to sunlight needed to seek nectar and search for mates;

(2) Larval host-plants: *Lupinus sulphureus* ssp. *kincaidii, L. arbustus*, or *L. albicaulis*;

(3) Adult nectar sources, such as: *Allium acuminatum* (tapertip onion), *Allium amplectens* (narrowleaf onion), *Calochortus tolmiei* (Tolmie's mariposa lilly), *Camassia quamash* (small camas), *Cryptantha intermedia* (clearwater cryptantha), *Eriophyllum lanatum* (wooly sunflower), *Geranium oreganum* (Oregon geranium), *Iris tenax* (toughleaf iris), *Linum angustifolium* (pale flax), *Linum perenne* (blue flax), *Sidalcea campestris* (Meadow checkermallow), *Sidalcea virgata* (rose checker-mallow), *Vicia cracca* (bird vetch), *V. sativa* (common vetch) and *V. hirsute* (tiny vetch);

(4) Stepping stone habitat: Undeveloped open areas with the physical characteristics appropriate for supporting the short-stature prairie, oak/savanna plant community (well drained soils), within and between natal lupine patches (~1.2 miles (~2 km)), necessary for dispersal, connectivity, population growth, and, ultimately, viability.

The PCEs for *Lupinus sulphureus* ssp. *kincaidii* are:

(1) Early seral upland prairie, oak savanna habitat with a mosaic of low growing grasses, forbs, and spaces to establish seedlings or new vegetative growth, with an absence of dense canopy vegetation providing sunlight for individual and population growth and reproduction and with undisturbed subsoils and proper moisture and protection from competitive invasive species.

(2) The presence of insect outcrossing pollinators, such as *Bombus mixtus* and *B. californicus*, with unrestricted movement between existing lupine patches, critical for successful lupine reproduction.

The PCE for *Erigeron decumbens* var. *decumbens* is:

(1) Early seral upland prairie, oak savanna habitat with a mosaic of low growing grasses, forbs, and spaces to establish seedlings or new vegetative growth, with an absence of dense canopy vegetation providing sunlight for individual and population growth and reproduction and with undisturbed subsoils and proper moisture and protection from competitive invasive species.

Criteria Used To Identify Critical Habitat

We are proposing to designate critical habitat on lands that we have determined were occupied at the time of listing and contain the primary constituent elements for Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens*. To identify areas of habitat containing the features essential for the conservation of all three species we selected areas that represent the current distribution of each species, are of sufficient quality (including size) to contribute to functioning metapopulations (which provide connectivity among core populations) or which represent unique ecological conditions. This approach is consistent with the general principles of conserving rare and endangered species and their habitats (Gilpin and Soule 1986; Goodman 1987a, 1987b; Stacey and Taper 1992; Lesica and Allendorf 1995; Falk *et al.* 1996; Fahrig 1997; Noss and Csuti 1997; Huxel and Hastings 1998; Redford and Richter 1999; Debinski and Holt 2000; Donaldson *et al.* 2002; Schultz *et al.* 2003; Wilson *et al.* 2003; Severns 2003a).

We selected areas across the current distribution of Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and

Erigeron decumbens var. *decumbens*. Species protected across their range face a lower risk of extinction than those protected in portions of their range (Soule and Simberloff 1986). This fundamental tenet of conservation biology is reflected in the draft recovery criteria and other reports for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens*, which document the need for functioning metapopulations distributed across the current range of these species (Hammond and Wilson 1993; Schultz *et al.* 2003; Schultz *et al.*, in litt., 2005; Gisler *et al.*, in litt., 2005; Robinson *et al.*, in litt., 2005).

We selected occupied areas exhibiting the highest quality habitat by evaluating the following factors for each known occurrence: The presence of prairie indicator species, amount of habitat degradation (exotic species and succession to shrubs and trees), population size, and available surrounding prairie habitat to support population growth. Specifically, we selected occupied prairie habitat rated as moderate to high quality (USFWS 2004a and 2004b; USFWS 2005). Moderate quality habitat is defined as those areas supporting a minimum of three prairie indicator species, providing adequate available habitat for population growth (surrounded by short-grass prairie habitat) and areas where habitat management activities would be effective at controlling threats. By identifying the highest quality occupied areas with supporting habitat available for population growth and expansion these areas are of sufficient size and quality to maintain viable populations.

We then selected areas that provide for population connectivity. Fender's blue butterfly habitat needs to be connected, ideally in a stepping-stone arrangement, to provide gene flow and demographic interaction between populations (Schultz 1998; Crone and Schultz 2003; Schultz *et al.* 2003; Schultz and Crone 2005). This connectivity is central to maintaining functioning metapopulations which are at lower risk of extinction than populations that do not interact. Reserves composed of functioning metapopulations increase the likelihood that recolonization of individual populations will occur following local extinctions (Huxel and Hastings 1998) or that populations with depressed gene pools will be ''rescued'', and reduce the risk of inbreeding depression, as previously described in the Space for Individual and Population Growth and Reproduction section.

We selected areas across a wide range of habitat conditions (e.g., *Erigeron decumbens* var. *decumbens* populations occurring in upland prairie habitat tolerate drier conditions than wet prairie *Erigeron decumbens* var. *decumbens* populations). Fahrig and Merriam (1994) recommended conservation of species across the variety of habitats in which they are found to reduce the chance of losing disjunct populations which may have a unique phenotype, genotype, or adaptations to local environmental conditions.

All sites selected based on the above principles were then screened with the following criteria which were used to evaluate all occupied areas supporting the PCEs to delineate the habitat containing the features essential to the conservation of the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens*:

(1) We used our best professional judgment to select all prairie remnants supporting core populations distributed across their respective ranges. Based on site-specific evaluations completed during field verification of occurrence data (USFWS 2003a, 2004a, and 2004b) and various scientific reports (Severns 2004; Hammond 2004; Fitzpatrick 2005; BLM 2005; Kuykendall and Kaye 1993a, 1993b; Clark *et al.* 1993), core sites were identified as the highest quality sites which significantly contribute towards both local metapopulation function and range wide distribution.

From the areas selected according to the above principles, we eliminated some areas from further consideration if they did not contain features essential for the conservation of the species because: (1) The area was highly degraded and may not be restorable; and (2) the area was small, highly fragmented, or isolated such that it would provide little or no long-term conservation value.

(2) In addition to habitat patches meeting criteria 1 above, we evaluated all populations that were in close proximity (1.2 miles (2 km) for Fender's blue butterfly and 5 miles (8 km) for both plant species) to core populations. Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* all require functioning metapopulations to ensure long-term persistence. Therefore, areas that provide stepping-stone habitat between two core populations of each species are necessary for the conservation of these species. These areas include habitat patches meeting the criteria below:

(a) For *Lupinus sulphureus* ssp. *kincaidii*, we selected areas supporting at least 0.25 ac (0.1 ha) of plant cover located within 5 miles (8 km) of core populations;

(b) For *Erigeron decumbens* var. *decumbens*, we selected areas supporting a minimum of 200 plants (estimated to be 0.6 ac (0.24 ha) based on average density (Clark *et al.* 1993)) located within 5 miles (8 km) of core populations;

(c) For Fender's blue butterfly, we selected areas within 1.2 miles (2 km) of a core Fender's blue butterfly population and between two Fender's blue butterfly populations.

(3) To select areas in atypical ecological settings we used the following criteria:

(a) For Fender's blue butterfly we selected populations occurring on valley hillsides that may be climax grasslands;

(b) For *Erigeron decumbens* var. *decumbens* we selected populations on wet and upland prairie habitats;

(c) For *Lupinus sulphureus* ssp. *kincaidii* we selected populations in Douglas County, Oregon, where plants tend to be more shade tolerant.

Applying the Criteria

The PCEs were examined in combination with habitat maps, land use maps, aerial photographs, and occurrence data for populations meeting the above criteria to identify the extent of prairie habitat supporting viable species occurrences. Areas providing the physical and biological features essential to the conservation of these species were identified and the prairie habitat boundaries were digitized. Local land managers and scientific experts familiar with the prairie habitat patches were then asked to review prairie mappings to ensure that only areas able to support Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* were included within our prairie boundaries. The proposed critical habitat units were then delineated by overlaying those extant species locations meeting criteria 1–3 above, and mapping prairie boundaries onto 2000 USGS 1:24,000 scale 3.75 orthophotographic quadrangle images.

When determining proposed critical habitat boundaries, effort was made to avoid proposing the designation of developed areas such as buildings, paved areas, and other structures that lack PCEs for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens*. Any such structures inadvertently left inside proposed

critical habitat boundaries are not considered part of the proposed unit.

Special Management Considerations or Protections

When designating critical habitat, we determine whether areas occupied at the time of listing and containing the primary constituent elements may require special management considerations or protections.

Maintenance of Open Habitat Conditions

Since most prairie habitat within the range of these species is early-successional, active management is necessary for the conservation of all populations of Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* that occur in the proposed units described below. Without active management or natural disturbance, many populations may be lost to habitat succession (Wilson 1998a, 1998b; Wilson *et al.* 2003) as trees and shrubs grow and outcompete early seral plants and shade-out or crowd-out important early seral species such as *L. sulphureus* ssp. *kincaidii, E. decumbens* var. *decumbens* and Fender's blue butterfly nectar sources. Left unmanaged, entire lupine populations in these early seral habitats may disappear (Wilson *et al.* 2003).

Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii*

Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* populations respond positively to habitat restoration. Mowing, burning and mechanical removal of weeds, when done appropriately, have all been shown to benefit Fender's blue populations. At sites managed by TNC, the Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* populations increased following removal of noxious non-native plants such as: *Rubus discolor* (Himalayan blackberry) and *Cytisus scoparius* (Scotch broom) (Fitzpatrick 2005). Wilson and Clark (1997) studied the effects of controlled fire and mowing on Fender's blue butterfly and its native upland prairie at Baskett Slough National Wildlife Refuge in western Oregon. Although fire killed all larvae in treated patches, nearby unburned (untreated) patches provided a source of female Fender's blue butterflies that were able to recolonize the entire burned (treated) area. Wilson and Clark (1997) also found that Fender's blue butterfly eggs were 10 to 14 times more abundant in plots that were mowed or burned compared to undisturbed, control plots. Woody plants were reduced 45 percent with burning and 66 percent with mowing. At the Corps' Fern Ridge Reservoir, the Fender's blue population has increased dramatically since fall mowing of *L. sulphureus* ssp. *kincaidii* patches has been implemented. The abundance of Fender's blue butterfly eggs and *L. sulphureus* ssp. *kincaidii* have increased as blackberry bushes have been controlled in several test plots located on BLM lands in Eugene, Oregon (Kaye and Cramer 2003). In general, Fender's blue butterfly egg abundance increased substantially at sites treated to control non-native weeds (Schultz *et al.* 2003).

Erigeron decumbens var. *decumbens*

Since periodic fire is believed to have historically maintained open prairie conditions, the use of prescribed burning as a maintenance tool has been investigated for restoring wet prairie habitats (Clark and Wilson 1998). Studies investigating the effects of fire on *Erigeron decumbens* var. *decumbens* populations have been inconclusive, as to whether fire promotes or inhibits populations (Wilson and Clark 1997). Additionally, research efforts investigating the control of woody vegetation in wet prairies demonstrated that none of the treatments (fire, mowing, and hand removal of woody vegetation) proved to be more effective than the others (Clark and Wilson 2000). Mowing with the removal of cut material actually increased the presence of non-native herbaceous species and should not be used as a management tool (Clark and Wilson 2000). Because *Erigeron decumbens* var. *decumbens* does not tolerate the presence of woody vegetation, habitat management will be required for the long-term persistence of this species. Further investigation is needed to determine the most appropriate techniques for managing available habitat. Also, due to the low reproductive capability of the species, recovery of the *E. decumbens* var. *decumbens* will likely depend on artificially augmenting populations in areas where woody vegetation has been removed (Clark 2000).

Reduce Habitat Fragmentation and Increase Population Size

The Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* are at risk of inbreeding depression and site extirpation across their respective ranges because populations are small and isolated from one another (Jackson 1996; Schultz *et al.* 2003, Severns 2003a, 2003b; Schultz *et al.* in prep). All three species will benefit from reestablishing prairie plant patches in close proximity to core populations. This will also establish reserve areas that may ultimately be needed for delisting (Gisler *et al.*, in litt., 2005; Schultz *et al.*, in litt., 2005).

Efforts have been made to establish stepping-stones of lupine habitat between core Fender's blue butterfly populations occurring on BLM lands and Corps lands. A small patch of *Lupinus sulphureus* ssp. *kincaidii* planted in 2001 between two core Fender's blue butterfly populations became occupied by the species during the 2004 field season (Severns 2004). While inconclusive, this observation provides evidence that Schultz's (1998) recommended stepping-stone reserve design may allow for successful dispersal between populations (Severns 2004). Connectivity is considered essential to the survival of each of these populations (Schultz *et al.* in prep.; Severns 2004). The reserve design concept has been documented to likely benefit *L. sulphureus* ssp. *kincaidii* as well, since lupine patches located in close proximity to one another are more likely to be cross-pollinated.

Schultz *et al.* (in prep.) completed a study to determine if fragmented prairie remnants near Eugene, Oregon, can be restored to a large functioning metapopulation that will persist over the long-term. Several populations occur in this area but they are too far apart for the butterfly to disperse (greater than 1.2 miles (2 km)) and there are few intervening habitat patches. This study specifically looked at the conservation potential of restorable land located between the populations in a matrix of urban and agricultural land uses. Results of this study indicate that restoring existing prairie habitat to high quality may result in viable but unconnected populations unless habitat between populations is also reestablished.

Expanding *Erigeron decumbens* var. *decumbens* populations will require more investigation into the roles of sexual and vegetative reproduction of this species. If sexual reproduction proves to be most important for population recruitment, then mangers will need to focus on strategies that promote flowering, seed production, and seedling establishment (Clark 2000). However, if vegetative regeneration is predominant, then managers will need to focus on activities that promote ramet production (Clark 2000). Clark *et al.* (1995b) found that vegetative propagation is a viable technique for *E. decumbens* var. *decumbens*; populations may also be increased by sowing seeds under appropriate conditions, although this technique

appeared to be less effective than vegetative propagation.

Roadside, Power Right-of-Way, and Railroad Maintenance

Many remaining populations of Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* populations occur in road right-of-ways and are adversely affected by maintenance activities such as mowing and/or spraying of herbicides when applied at the wrong time of year. In general, these kinds of maintenance activities should be implemented between August 1 and March 15 to avoid adverse impacts to these species. A few *L. sulphureus* ssp. *kincaidii* populations along roads persist, likely because the routine maintenance provides open, full-sun conditions characteristic of *L. sulphureus* ssp. *kincaidii* habitat.

Protection

Several *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* populations occur on private lands and consequently remain unprotected under existing state or federal statutes because these laws do not protect listed plants on private lands (Wilson *et al.* 2003). Limited protection of plant populations may be afforded under programs administered by the USDA Natural Resources Conservation Service, such as the Wetland Reserve Program. However, current program rules prioritize disturbed agricultural lands over prairie remnant habitats which limits the programs ability to protect existing plant populations since they typically do not occur in disturbed agricultural lands. Lacking statutory protection, Wilson *et al.* (2003) concluded that many of the plant populations occurring on private lands will likely be lost to development, agriculture, and invasion of weeds.

The Fender's blue butterfly is dependent primarily on *L. sulphureus* ssp. *kincaidii* as a larval food source and for egg laying (ovipositioning). When populations of *L. sulphureus* ssp. *kincaidii* are destroyed, it also reduces the opportunity to expand existing Fender's blue butterfly populations.

Proposed Critical Habitat Designation

We are proposing 13 units as critical habitat for Fender's blue butterfly, 16 units for *Lupinus sulphureus* ssp. *kincaidii* and 9 units for *Erigeron decumbens* var. *decumbens* (see Figure 1). The critical habitat units described below constitute our best assessment of the features essential to the conservation of the Fender's blue butterfly, *L. sulphureus* ssp. *kincaidii*, and *E. decumbens* var. *decumbens* that were occupied at the time of listing, that contain the primary constituent elements, and that may require special management.

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Figure 1: Index Map

Fender's Blue Butterfly (FBB) *(Icaricia icarioides fenderi)*, *Lupinus sulphueus* ssp. *kincaidii* (Kincaid's Lupine (KL)), and *Erigeron decumbens* var. *decumbens* (Willamette Daisy (WD))

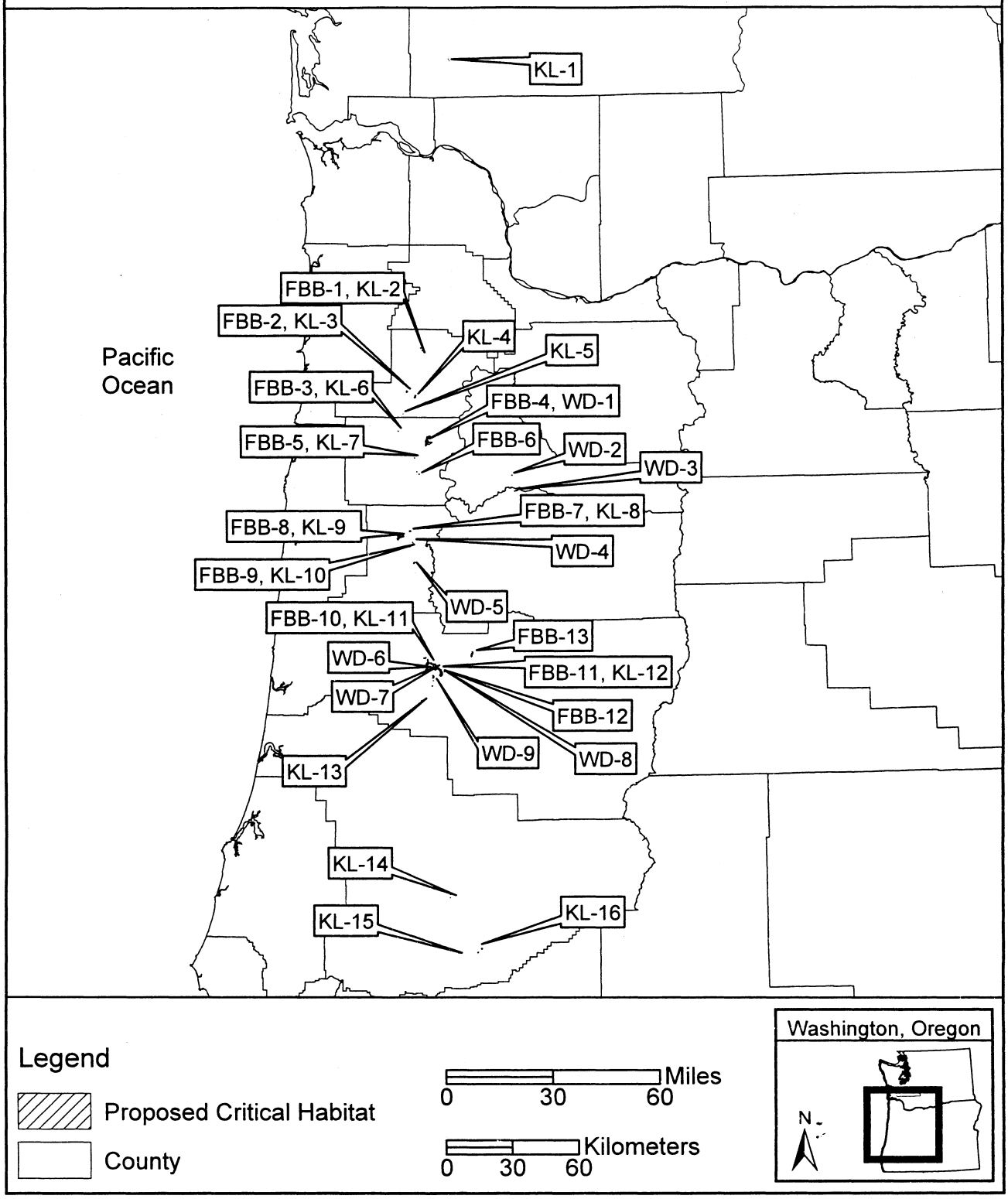

Table 1 provides the approximate area (ac/ha) determined to contain the features essential to the conservation of Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* and area proposed for exclusion from the final critical habitat designation by County. The approximate area encompassed within each proposed critical habitat unit is shown in Table 2.

Table 1. Proposed critical habitat for the three Willamette Valley species and the areas proposed for exclusion from the final critical habitat designation

	State	County	Area	Proposed Exclusion
			Proposed acres (hectares)	Proposed acres (hectares)
Fender's Blue Butterfly:	Oregon	Benton	813.62 (329.26)	0 (0)
		Lane	1,005.04 (406.65)	0 (0)
		Polk	1,198.66 (485.08)	0 (0)
		Yamhill	71.35 (28.86)	0 (0)
Species total			3,088.67 (1,249.85)	0 (0)
Lupinus sulphureus ssp. kincaidii:	Oregon	Benton	237.71 (96.19)	0 (0)
		Douglas	100.43 (40.65)	0 (0)
		Lane	222.13 (89.87)	0 (0)
		Polk	15.93 (6.45)	0 (0)
		Yamhill	141.62 (57.30)	0 (0)
	Washington	Lewis	5.87 (2.37)	0 (0)
Species total			723.69 (292.83)	0 (0)
Erigeron decumbens var. decumbens:	Oregon	Benton	47.76 (19.32)	0 (0)
		Lane	558.42 (225.99)	0 (0)
		Linn	58.28 (23.59)	0 (0)
		Marion	12.23 (4.95)	0 (0)
		Polk	41.20 (16.67)	0 (0)
Species total			717.89 (290.52)	0 (0)

Table 2: Approximate Areas of Critical Habitat for the Three Willamette Valley Species in Oregon and Washington

	Federal lands	State lands	County/City Lands	Private Lands	Total Lands	
	Proposed acres (hectares)	Proposed acres (hectares)	Proposed acres (hectares)	Proposed acres (hectares)	Proposed acres	Proposed hectares
Fender's Blue Butterfly:						
FBB-1	0 (0)	0 (0)	0 (0)	20.36 (8.23)	20.36	8.23
FBB-2	0 (0)	0 (0)	0 (0)	50.99 (20.63)	50.99	20.63
FBB-3	0 (0)	2.53 (1.02)	0 (0)	1.12 (0.46)	3.65	1.48
FBB-4	629.00 (254.39)	0 (0)	0 (0)	535.84 (216.84)	1,164.84	471.23
FBB-5	0 (0)	0 (0)	0 (0)	12.28 (4.97)	12.28	4.97
FBB-6	0 (0)	0 (0)	0 (0)	18.29 (7.40)	18.29	7.40
FBB-7	0 (0)	5.58 (2.26)	0 (0)	42.74 (17.29)	48.32	19.55
FBB-8	0 (0)	0 (0)	0 (0)	716.69 (290.03)	716.69	290.03
FBB-9	0 (0)	0 (0)	0 (0)	48.61 (19.68)	48.61	19.68
FBB-10	308.33 (124.75)	0 (0)	43.08 (17.42)	162.90 (66.00)	514.31	208.17
FBB-11	180.64 (73.09)	2.53 (1.02)	19.13 (7.74)	41.49 (16.78)	243.79	98.63
FBB-12	0 (0)	0 (0)	0 (0)	114.36 (46.28)	114.36	46.28
FBB-13	0 (0)	0 (0)	0 (0)	132.50 (53.60)	132.50	53.60
Species Total	1,117.97 (452.23)	10.64 (4.30)	62.21 (25.16)	1,898.17 (768.19)	3,088.99	1,249.88
Lupinus sulphureus ssp. kincaidii:						
KL-1	0 (0)	0 (0)	0 (0)	5.87 (2.30)	5.87	2.30
KL-2	0 (0)	0 (0)	0 (0)	20.36 (8.23)	20.36	8.23
KL-3	0 (0)	0 (0)	0 (0)	50.99 (20.63)	50.99	20.63
KL-4	0 (0)	0 (0)	0 (0)	69.00 (28.00)	69.00	28.00
KL-5	0 (0)	1.69 (0.69)	0 (0)	0 (0)	1.69	0.69
KL-6	0 (0)	2.53 (1.02)	0 (0)	1.00 (0.46)	3.53	1.48
KL-7	0 (0)	0 (0)	0 (0)	12.28 (4.97)	12.28	4.97
KL-8	0 (0)	0 (0)	0 (0)	28.15 (11.39)	28.15	11.39
KL-9	0 (0)	0 (0)	0 (0)	42.74 (17.29)	48.32	19.55

	Federal lands	State lands	County/City Lands	Private Lands	Total Lands	
	Proposed acres (hectares)	Proposed acres (hectares)	Proposed acres (hectares)	Proposed acres (hectares)	Proposed acres	Proposed hectares
KL-10	0 (0)	0 (0)	0 (0)	17.89 (7.24)	17.89	7.24
KL-11	56.72 (22.94)	0 (0)	0.48 (0.19)	7.56 (3.05)	64.76	26.18
KL-12	21.46 (8.68)	0 (0)	0 (0)	119.68 (48.44)	141.14	57.12
KL-13	0 (0)	0 (0)	0 (0)	16.23 (6.57)	16.23	6.57
KL-14	21.16 (8.56)	0 (0)	0 (0)	2.92 (1.18)	24.08	9.74
KL-15	3.27 (1.33)	0 (0)	0 (0)	7.47 (3.03)	10.74	4.36
KL-16	63.74 (25.80)	0 (0)	0 (0)	1.87 (0.75)	65.61	26.55
Species Total	166.35 (67.31)	9.80 (3.97)	0.48 (0.19)	547.36 (221.54)	723.99	293.01
Erigeron decumbens var. decumbens:						
WD-1	41.20 (16.67)	0 (0)	0 (0)	0 (0)	41.20	16.67
WD-2	0 (0)	0 (0)	0 (0)	12.23 (4.95)	12.23	4.95
WD-3	0 (0)	0 (0)	0 (0)	58.28 (23.59)	58.28	23.59
WD-4	0 (0)	0 (0)	5.76 (2.32)	3.51 (1.42)	9.27	3.74
WD-5	0 (0)	0 (0)	0 (0)	38.49 (15.58)	38.49	15.58
WD-6	77.08 (31.19)	0 (0)	0 (0)	8.36 (3.38)	85.44	34.57
WD-7	128.27 (51.91)	6.01	0 (0)	31.44 (12.72)	165.72	67.06
WD-8	77.61 (31.41)	0 (0)	0.48 (0.20)	135.11 (54.68)	213.20	86.29
WD-9	0 (0)	0 (0)	0 (0)	94.06 (38.07)	94.06	38.07
Species Total	324.16 (131.18)	6.01 (2.43)	6.24 (2.52)	381.48 (154.39)	717.89	290.52

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Fender's blue butterfly proposed critical habitat encompasses 3,089 ac (1,250 ha); 36 percent of this area is on Federal land; less than 1 percent is State land, 2 percent is local government land, and 61 percent is private land. Proposed critical habitat for *Lupinus sulphureus* ssp. *kincaidii* encompasses 724 ac (293 ha). Federal lands comprise 23 percent of this proposed area; 1 percent is State land, less than 1 percent is local government land, and 76 percent is private land. Proposed critical habitat for *Erigeron decumbens* var. *decumbens* includes 718 ac (291 ha); 45 percent of this habitat is on Federal land, 1 percent is State land, 1 percent is local government land, and 53 percent is private land.

Fender's Blue Butterfly

In total, we are proposing 13 critical habitat units, each of which represents the areas of habitat containing the features essential to the conservation of existing core populations across the range of the species. Collectively, these units provide the foundation for 8 of the 10 Recovery Reserve areas. Each unit represents a core population that is currently isolated from other occupied areas and each unit was occupied at the time of listing. As previously identified, three of the Recovery Reserves will need to be large functioning metapopulations to be considered for delisting (Schultz *et al.*, in litt., 2005). Therefore, to simplify unit descriptions we have grouped units that with proper management and restoration may function as larger connected metapopulations. For many Recovery Reserves we do not have the information at this time to identify lands that provide stepping-stone habitat between units that will likely be needed to meet recovery goals. However, with proper management the proposed critical habitat will provide the necessary conditions to ensure Fender's blue butterfly populations will persist across their range.

Unit 1 for Fender's blue butterfly (Units FBB–1A and 1B):

Units FBB–1A and 1B encompass approximately 6.25 ac (2.5 ha) and 14 ac (5.75 ha) respectively, of private land occurring within northern Yamhill County and within the Oak Ridge Recovery Reserve boundaries identified in the draft recovery plan (Schultz *et al.*, in litt., 2005). The Oak Ridge butterfly population is supported by three separate habitat patches, and the population has been monitored annually for ten years (Hammond 2004). The population has become much larger over the last three years with an estimated 259 butterflies in 2004 (Hammond 2004). FBB–1A represents the northern most known occupied habitat patch in the current range of Fender's blue butterfly and occurs along both the east and west sides of Oak Creek Road. FBB–1B is located approximately 0.7 miles (1.1 km) south of FBB–1A along both the east and west sides of Oak Creek Road, near the junction with Fairdale Road. The prairie habitat within FBB–1A and FBB–1B includes the PCEs essential to the conservation of this core population, which represents the foundation for one of ten reserve complexes necessary for delisting this species (Schultz *et al.*, in litt., 2005).

In recent years the Oak Ridge butterfly metapopulation has been evenly distributed between the three lupine patches. However, ten years of monitoring reports for this population indicate that the number of individuals supported by each habitat patch has increased and decreased annually with one habitat patch disproportionately supporting the population each year. The population fluctuations documented at these sites are attributed to the following threats: Roadside maintenance, livestock grazing and presence of invasive species (Hammond 2004). The overall population has remained relatively stable, likely because its distribution between three habitat patches provides opportunity for recolonization of impacted habitat patches (Hammond 2004). The prairie habitat within and between FBB–1A and 1B should be managed to allow for growth and expansion of this relatively small population in order to consistently maintain the population growth rate necessary for Recovery Reserves.

This unit provides the habitat containing the features that are essential for the continued persistence of the core population in this portion of the species' range. Establishing stepping-stone habitat between FBB–1A and 1B will contribute towards a more connected functioning metapopulation. However, at this time we do not have enough information to identify additional potential habitat for population expansion that may be necessary to meet delisting criteria. The prairie habitat identified in FBB–1A and 1B has the features essential to the conservation of this species because it has one of the largest remaining Fender's blue butterfly metapopulations; it is supported by its primary host plant, *Lupinus sulphureus* ssp. *kincaidii*; it occurs at the northern most extent of the species range (Hammond 2004); and there is surrounding prairie habitat available for population expansion.

Unit 2 for Fender's blue butterfly (Unit FBB–2):

Unit FBB–2 consists of approximately 51 ac (21 ha) of private lands within southern Yamhill County and occurs within the Gopher Valley Recovery Reserve boundaries identified in the draft recovery plan (Schultz *et al.*, in litt., 2005). The Gopher Valley butterfly population has been monitored annually for ten years (Hammond 2004) and has remained stable with a relatively low number of individuals consistently being reported (as compared to other stable populations) (Hammond 2004). The *Lupinus sulphureus* ssp. *kincaidii* habitat supporting this population occurs in two habitat patches scattered along the east and west sides of Gopher Valley Road. The largest distance separating lupine patches is approximately 0.12 miles (0.2 km). This population is threatened by the limited availability of nectar sources, presence of invasive species, and roadside maintenance activities.

With the proper management of the prairie habitat surrounding the population located within the FBB–2 unit boundary, this area should provide opportunity for population growth and expansion of both Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii.* Unit FBB–2 provides ease of Fender's blue butterfly movement between lupine habitat patches, and to all the features essential to the conservation of the species. The area identified within the boundaries of FBB–2 provides the foundation for the Gopher Valley Recovery Reserve (Schultz *et al.*, in litt., 2005). The prairie habitat identified in FBB–2 has the features essential to the conservation of this species because it is one of the largest remaining Fender's blue butterfly populations in this portion of its range; it is supported by its primary host plant; it provides the foundation for the existence of the species in this portion of its range (Hammond 2004); and there is surrounding prairie habitat available for population expansion.

Unit 3 for Fender's blue butterfly (Unit FBB–3):

Unit FBB–3 encompasses approximately 3.65 ac (1.5 ha) of primarily state-owned lands within northern Polk County and occurs within the Mill Creek Recovery Reserve boundaries identified in the draft recovery plan (Schultz *et al.*, in litt., 2005). The Mill Creek butterfly population has been monitored annually for ten years (Hammond 2004) and the overall number of individuals has increased over the past three years (Hammond 2004). The lupine habitat supporting this population occurs in two patches scattered along the northeast and southwest sides of Highway 22, near the intersection with Mill Creek Road. The Oregon Department of Transportation (ODOT) owns most of the habitat supporting this population. Hammond (2004) documents the history of threats to this unit, largely the presence of invasive grasses and shrubs that have overgrown the habitat, suppressing the lupine and *Erigeron decumbens* var. *decumbens* populations occupying this prairie remnant.

Mowing activities implemented by ODOT in 2000 resulted in a large growth flush of *Lupinus sulphureus* ssp. *kincaidii* and Fender's blue butterfly. This demonstrates that appropriate management of this site should provide the habitat essential for population growth and expansion and ultimately the survival of this population. Due to the limited availability of supporting prairie habitat, and the existing habitat being divided by the highway, this population will likely need to be augmented with other areas to meet Recovery Reserve criteria. However, at this time we do not have enough information to identify potential habitat for population expansion. It is possible that other populations occur nearby because the surrounding areas support large open areas that have yet to be surveyed. The prairie habitat identified in FBB–3 has the features essential to the conservation of this species because it is supported by its primary host plant; the population size has been increasing over the last few years; it is one of the largest remaining Fender's blue butterfly populations in this portion of its range and it provides the core metapopulation for the Mill Creek Recovery Reserve (Schultz *et al.*, in litt., 2005).

Unit 4 for Fender's blue butterfly (Units FBB–4A and 4B):

Units FBB–4A and 4B encompass approximately 536 ac (217 ha) and 629 ac (254 ha) respectively, of private and

Federal land occurring within northern Polk County and within the Baskett Recovery Reserve boundaries identified in the draft recovery plan (Schultz *et al.*, in litt., 2005). Units FBB–4A and 4B are located adjacent to Highway 22 approximately 5.5 miles (8.8 km) northeast of the City of Dallas. Units FBB–4A and 4B are approximately 0.12 miles (0.2 km) apart with predominately agricultural lands occurring between these populations. An estimated 64 percent of the habitat encompassed within Unit FBB–4 occurs within the boundaries of the Service's Baskett Slough National Wildlife Refuge (Refuge) and approximately 36 percent of the prairie habitat occurs on adjacent private lands. Refuge biologists have documented the occurrence of the PCEs throughout the habitat within FBB–4A and 4B and also the Fender's blue butterfly's utilization of these areas (USFWS 2005).

Many of the populations occurring in FBB–4A have been monitored annually for ten years (Hammond 2004), and populations occupy ten separate patches of *Lupinus arbustus* which are scattered across the unit. Recent survey results indicate that this metapopulation increased dramatically in size during 2003–2004 (Hammond 2004). The total metapopulation size was estimated at 223 individuals in 2001 and approximately 1,368 individuals in 2004. This large surge in population is likely the result of both favorable weather conditions and habitat management activities implemented by Refuge staff during the 2001–2002 field seasons (Hammond 2004). Habitat conditions had steadily declined between 1993 and 2001 due to encroachment of grasses and brush in the upland prairie habitat (Hammond 2004). These habitat conditions had adversely impacted not only the Fender's blue butterfly but also the population of *Erigeron decumbens* var. *decumbens* supported within FBB–4A.

Unit FBB–4 (FBB–4A and 4B) supports the largest known Fender's blue butterfly metapopulation and the largest contiguous occupied prairie patch in the range of the species. This relatively large, contiguous prairie habitat is one of a few occupied remnants occurring on valley hillsides, with most remaining populations occurring on the valley floor. The open nature of the lands occurring between FBB–4A and 4B increases the potential for individuals to successfully disperse between habitat patches. Based on recent population increases, it is likely that with the continued management of invasive species across FBB–4A and 4B these units could support one of the three ''large functioning metapopulations'' required for delisting (Schultz *et al.*, in litt., 2005) of the Fender's blue butterfly. Each of the required large functioning reserves is distributed across the species' range with this metapopulation occurring in the northern region. This unit has the features essential to the conservation of the species because it supports the largest known metapopulation, consists of ten connected populations and provides an abundance of nectaring and dispersal habitat that allows for population growth and expansion.

Unit 5 for Fender's blue butterfly (Unit FBB–5):

Unit FBB–5 consists of approximately 12.3 ac (5 ha) of private lands within the central portion of Polk County and occurs within the Dallas/Polk County Recovery Reserve boundaries (Schultz *et al.*, in litt., 2005). Unit FBB–5 is located near the junction of Highway 223 and Oakdale Avenue and largely falls within the City of Dallas' urban-growth boundary. Although Hammond (2004) has estimated the size of this population for over ten years, he documents that he has been unable to access the site for over seven years and has been limited to visually-obstructed roadside observations. During the 2004 field season, we met with the private landowner who owns one of the parcels currently supporting the population and we were able to document the extent to which the PCEs were distributed on several adjoining parcels. Additionally, we surveyed an adjoining parcel, which is listed for sale, on the south side of the prairie remnant, and it supports nectar habitat essential to the conservation of this population. The landowner we met with in 2004 has entered into a Partners for Fish and Wildlife Agreement (USFWS 2004d) and in cooperation with Refuge staff, has agreed to manage his portion of the Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* populations. The Fender's blue butterfly population is threatened by the limited availability of food plants, presence of invasive species, and the impacts associated with the encroachment of urban development. Hammond (2004) has documented the removal of several acres of Fender's blue butterfly habitat over the last ten years for residential development.

At this time, we do not have enough information to specifically identify which surrounding areas support the PCEs and could contribute towards population expansion and the long-term viability of a larger metapopulation. The open areas to the south support prairie remnants that historically supported Fender's blue butterfly populations and have been extirpated over the last ten years (Hammond 2004). Reintroductions of *Lupinus sulphureus* ssp. *kincaidii* or augmentations may be necessary for the long-term viability of the Dallas/Polk County Recovery Reserve. Although this unit likely represents only a portion of the area necessary for long-term viability of the Dallas/Polk County Recovery Reserve, appropriate management of the prairie habitat within FBB–5 should provide opportunity for population growth and expansion, and ultimately the survival of the population. Unit FBB–5 provides the habitat containing the features essential for the continued persistence of this core population by providing the ''backbone'' of a larger metapopulation for this Recovery Reserve.

Unit 6 for Fender's blue butterfly (Units FBB–6A and 6B):

Units FBB–6A and 6B encompass approximately 2.4 ac (1 ha) and 16 ac (6.5 ha) respectively, of private lands occurring within southern Polk County and the Dallas/Polk County Recovery Reserve boundaries (Schultz *et al.*, in litt., 2005). Unit FBB–6A is located along McCaleb Road near Cooper Creek and Unit FBB–6B is approximately 0.8 mile (1.4 km) south of FBB–6A along Monmouth Highway. Several Fender's blue butterfly populations historically occurring south of Dallas, Oregon have been extirpated over the last decade (Hammond 2004). The habitat encompassed within FBB–6 (FBB–6A and 6B) supports the core butterfly population occurring at the southern end of the Dallas/Polk County Recovery Reserve. Reintroductions of *Lupinus sulphureus* ssp. *kincaidii* or augmentations may be necessary at extirpated sites to provide stepping-stone habitat between FBB–5 and FBB–6 in order to ensure for the long-term viability of the Dallas/Polk County Recovery Reserve. Unit FBB–6 apparently provides the habitat containing the features essential to the persistence of this core population, as evidenced by an increasing population size over the last few years; it is one of the largest remaining Fender's blue butterfly populations in this portion of its range and it is one of two core, isolated populations providing the ''backbone'' at the southern end of this Recovery Reserve.

The larval host plant found in FBB–6B is *Lupinus albicaulis,* and based on roadside observations, Hammond (2004) estimates several hundred individuals occupy this habitat. Since *L. albicaulis* is a short-lived perennial, Hammond (2004) documents that without periodic disturbance this butterfly population may disappear more quickly than

populations using *L. sulphureus* ssp. *kincaidii* and *L. arbustus* as a host plant. However, *L. albicaulis* is the primary host plant for Puget blue butterfly (*Icaricia icarioides blackmorei*) and appears to serve the Puget blue quite well (Schultz, in litt., 2005). Additionally, other roadside populations of Polk County Fender's blue butterfly supported by *L. albicaulis* have remained stable for over a decade (Hammond 2004). Even if the available habitat is transitory, it may serve as an important stepping-stone between other sites and enhance genetic exchange between sites over the period that the butterflies use the site (Schultz, in litt., 2005).

FBB–6A supports a roadside population of *Lupinus sulphureus* ssp. *kincaidii* and is located between FBB–6B and a Fender's blue butterfly site where individuals have not been seen for two years. FBB–6A provides stepping-stone habitat for Fender's blue butterfly and is essential to the long-term persistence of the Dallas/Polk County Recovery Reserve.

Units 7, 8, and 9 for Fender's blue butterfly (Units FBB–7, FBB–8, and FBB–9):

Units FBB–7, FBB–8, and FBB–9 collectively represent the areas of habitat containing the features essential to the conservation of the Fender's blue butterfly populations in northern Benton County, which with appropriate management could support one of the three large functioning metapopulations necessary for the Fender's blue butterfly to be considered for delisting (Schultz *et al.*, in litt., 2005). This reserve is located in the central region of the species range and consists of two large and one medium size populations that are isolated from one another. The availability of habitat in each of these units provides opportunity for population growth and expansion, with appropriate stepping-stone habitat conditions available for facilitating ease of movement within units.

Each of these units is essential to the conservation of the species because they collectively support three of the largest remaining Fender's blue butterfly populations in this portion of the species range and are located in relatively close proximity to one another, thus increasing the potential for interaction between populations, they are all supported by *Lupinus sulphureus* ssp. *kincaidii,* and there is surrounding prairie habitat available for metapopulation expansion. Stepping-stone habitat between FBB–7, FBB–8, and FBB–9 may contribute to a yet larger, functioning metapopulation. The habitat included within each of these units provides the foundation for long-term persistence of each respective isolated population and recovery strategies should focus on opportunities to connect metapopulations to larger, functioning metapopulations.

Unit 7 for Fender's blue butterfly (Unit FBB–7):

Unit FBB–7 consists of approximately 48.3 ac (19.6 ha) of private and State lands within Benton County. The habitat in this unit supports the second largest known Fender's blue butterfly population and occurs in McDonald Forest located off of Oak Creek Road. Approximately 14 percent of the habitat supporting the PCEs within FBB–7 occurs on Oregon State University lands and the remaining 86 percent occurs on private lands. This Fender's blue butterfly population has been monitored annually for ten years (Hammond 2004) and recent studies indicate this population has the highest chance of long-term persistence based on population trend data (Schultz *et al.* 2003).

This population is threatened by the encroachment of invasive grasses and succession to forest, especially in narrow areas of the meadow where tree encroachment could block-off portions of the habitat and isolate portions of the populations. Although a management plan has not been completed for this unit, the landowner is interested in maintaining the prairie habitat for the butterfly. In cooperation with Oregon State University scientists, the landowner is studying appropriate management techniques for controlling invasive *Brachypodium sylvaticum* (false brome). Unit FBB–7 provides a diverse composition of high quality habitat utilized by all life stages of the Fender's blue butterfly. This habitat is uniquely located in a meadow surrounded by forested land and supports the second largest remaining Fender's blue butterfly populations across the range of the species. This population provides the foundation for one of the three large, functioning metapopulations necessary for delisting (Schultz *et al.*, in litt., 2005) and is located in the central portion of the species range.

Unit 8 for Fender's blue butterfly (Unit FBB–8):

Unit FBB–8 encompasses approximately 717 ac (290 ha) of private lands within Benton County. This unit is located in Wren, Oregon, between Kings Valley Highway, Cardwell Hill Road and Blakesly Creek Road, approximately 2 miles (3.2 km) southwest of Unit FBB–7. Several of the Fender's blue butterfly populations occupying this unit have been surveyed annually for ten years (Hammond 2004).

A new population of Fender's blue butterfly has been documented using a large population of *Lupinus sulphureus* ssp. *kincaidii* located between two of the regularly monitored populations of Fender's blue butterfly (Hammond 2004). The powerline right-of-way that runs across Unit FBB–8 appears to play a significant role in Fender's blue butterfly dispersal between the *L. sulphureus* ssp. *kincaidii* populations scattered across this large contiguous high quality prairie (USFWS 2004a, 2004e). The relatively ''pristine'' (Hammond 2004), large prairie habitat included within Unit FBB–8 is essential for all life stages or this Fender's blue butterfly metapopulation. This core metapopulation provides the foundation for one of the three large, functioning metapopulations necessary for delisting (Schultz *et al.*, in litt., 2005).

Unit 9 for Fender's blue butterfly (Unit FBB–9):

Unit FBB–9 consists of approximately 49 ac (20 ha) of private lands located north of Philomath. The habitat occurs primarily to the south of West Hills Road and to the west of 19th Street. The Greenbelt Land Trust recently obtained a conservation easement for 51 percent of the prairie habitat supporting this population. Adult Fender's blue butterfly individuals have been observed using the nectaring habitat in this remnant prairie and many of the *Lupinus sulphureus* ssp. *kincaidii* populations scattered throughout the unit. The Fender's blue butterfly population utilizing the eastern portion of this site has been monitored for the last five years (Hammond 2004). Threats to this site include encroachment of invasive species, trees and shrubs, and a small portion of the Unit FBB–9 is located along West Hills Road and impacted by roadside maintenance activities. Unit FBB–9 provides the habitat essential for all life stages of this butterfly population, and one of the core populations that are the foundation for one of the three, large functioning metapopulations necessary for delisting (Schultz *et al.*, in litt., 2005).

Units 10, 11, and 12 for Fender's blue butterfly (Unit FBB–10, FBB–11, and FBB–12):

Units FBB–10, FBB–11, and FBB–12, support the core populations essential to the conservation of the species in this southern portion of their range. Collectively, these units provide the foundation for the conservation of a third large, functioning Fender's blue butterfly metapopulation within the west Eugene Recovery Reserve boundaries (Schultz *et al.*, in litt. 2005).

Additionally, recent studies indicate that the areas collectively proposed in Units FBB–10, FBB–11, and FBB–12 are essential for the long-term viability of this larger metapopulation (Schultz *et al.* in prep.).

This reserve supports three core populations that are mostly isolated from one another (greater than 0.93 miles (1.5 km) from the nearest occupied lupine patch) with a few stepping-stone populations located between core populations. The availability of habitat within each of these units provides opportunity for population growth and expansion, as well as areas appropriate for stepping-stone habitat that will facilitate ease of movement within units. Each of these units is essential to the conservation of the species because they collectively support two of the largest remaining Fender's blue butterfly metapopulations (FBB–10 and FBB–12), the two metapopulations are located in relatively close proximity to one another providing a unique opportunity to reestablish a larger connected set of populations that functions as a viable metapopulation, the butterfly populations are all supported by *Lupinus sulphureus* ssp. *kincaidii,* and there is surrounding prairie habitat available for population expansion. Stepping-stone habitat in FBB–11 is necessary to provide connectivity between core butterfly populations to ensure the long-term persistence of this metapopulation.

Unit 10 for Fender's blue butterfly (Unit FBB–10A and 10B):

Unit FBB–10A and 10B encompass approximately 50 ac (20.5 ha) and 463 ac (188 ha) of prairie habitat, respectively, in Lane County, Oregon. The prairie habitat included within FBB–10A and 10B occurs on BLM and Corps land (60 percent), private lands (32 percent), and County lands (8 percent). Each of these subunits support a core metapopulation of Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* which have been surveyed annually since 1993 (Severns 2004; Fitzpatrick 2005). Eighty-four percent of the area included within FBB–10A occurs on Corps lands located near Shore Lane, NE Fern Ridge Reservoir.

The populations occupying FBB–10A require tall-oat grass management because this invasive grass now covers 100 percent of the habitat supporting all six populations (Severns 2004). Nevertheless, the 2004 population surveys reported the largest number of individuals ever observed at the site; the population size more than doubled between 2003 and 2004. The Corps has reestablished populations of *Lupinus sulphureus* ssp. *kincaidii* between core Fender's blue butterfly populations located within this unit to provide butterfly stepping-stone habitat and increase connectivity. In 2001, a small patch of *L. sulphureus* ssp. *kincaidii* was planted on the side of a spoil mound, on the south side of the Amazon Canal. The Fender's blue butterfly was documented using this lupine patch during the 2004 field season. This demonstrates that the recommended stepping-stone reserve design (Schultz 1998) will allow for successful dispersal between core populations occurring on Corps lands in FBB–10A and on BLM lands in FBB–10B (Severns 2004). This connection is considered essential to the survival of each of these populations (Schultz *et al.* in prep.; Severns 2004).

Approximately two-thirds of the prairie habitat included within FBB–10B occurs on publicly owned lands, primarily BLM, but also Corps and County lands, and the remaining one-third occurs on adjacent private lands. The center of this unit occurs near the intersection of Fir Butte Road and the Amazon Canal. Portions of the habitat occurring on BLM land are severely threatened by the closed canopy cover of *Rubus discolor* that has overtaken large areas of the site (Kaye 2004). Fender's blue butterfly populations supported by the habitat within FBB–10B would benefit from adult nectar source augmentations (Severns 2004). Habitat management will be necessary to increase the size and connectivity of butterfly populations by restoring additional stepping-stone habitat patches that enhance the connection between the core populations occupying FBB–10A and FBB–10B ((Schultz *et al.* in prep). Unit FBB–10 (FBB–10A and FBB–10B) provides the habitat containing the features essential for two butterfly populations. This unit includes one of the most contiguous prairie remnants, increasing the potential for connectivity between these two core populations and provides the foundation for reestablishing a large functioning metapopulation within the west Eugene Recovery Reserve boundaries (Schultz *et al.*, in litt., 2005).

Unit 11 for Fender's blue butterfly (Unit FBB–11A, 11B, 11C, 11D, and 11E):

Unit FBB–11A consists of 15.5 ac (6.3 ha) of privately owned land. FBB–11B includes approximately 14 ac (5.7 ha) of primarily BLM land (94 percent) with 6 percent occurring on private lands. FBB–11C encompasses approximately 22 ac (9 ha) with 94 percent occurring on BLM land and 6 percent on private lands. FBB–11D encompasses approximately 188 ac (76 ha) with 88 percent on publicly owned lands (County, BLM, and State) and 12 percent on private lands. FBB–11E consists of approximately 4.5 ac (1.8 ha) of land entirely owned by Lane County. Most of the lupine populations scattered across the prairie habitat within this unit are relatively small, but the habitat supporting them is essential to the long-term viability of a larger functioning Fender's blue butterfly metapopulation in this southern portion of the species range (Schultz *et al.* in prep).

The area included within this unit provides needed stepping-stone habitat between the BLM/Corps metapopulation to the northwest and TNC metapopulations to the southeast (Schultz *et al.* in prep). Local land managers recently surveyed this area to identify habitat patches suitable for reestablishing *Lupinus sulphureus* ssp. *kincaidii* populations as stepping-stones for the Fender's blue butterfly (Schultz *et al.* in prep.). The areas they identified occur within this unit boundary and this habitat will need to be enhanced to increase the size and connectivity of butterfly populations by restoring patches between core metapopulations within FBB–10 and FBB–12 (Schultz *et al.* in prep.). Unit FBB–11 (FBB–11A, 11B, 11C, 11D, and 11E) provides the habitat essential for all life stages of this butterfly population because it includes habitat to reestablish connectivity between two of the largest remaining metapopulations, and it increases viability of all populations in this portion of the species range. The habitat included within FBB–11 is essential for reestablishing connectivity between existing metapopulations and providing for a large functioning metapopulation (Schultz *et al.* in prep.).

Unit 12 for Fender's blue butterfly (Units FBB–12A and 12B):

Units FBB–12A and 12B encompasses approximately 114.4 ac (46 ha) with the majority of this land occurring on TNC property and are located near the intersection of Bailey Hill Road and Bertelson Road. The *Lupinus sulphureus* ssp. *kincaidii* and Fender's blue butterfly populations are scattered across the 508 ac (206 ha) of remnant prairie known as the Willow Creek Natural Area (Fitzpatrick 2005). FBB–12A and 12B function as a metapopulation and collectively represent the third largest Fender's blue butterfly metapopulation across the range of the species. The populations occurring within this unit have been monitored for over 10 years (Fitzpatrick 2005).

The habitat within FBB–12A and 12B is threatened by exotic vegetation and

succession to woody vegetation. To ensure viability of the Willow Creek metopopulation, the area within this unit should be enhanced to provide opportunity for population growth and expansion (Schultz *et al.* in perp). Unit FBB–12 (FBB–12A and 12B) has the features essential to the conversation of the specifies because it includes some of the highest quality remaining upland prairie, supports the large core metapopulation in this portion of the species range, and the metapopulation is fundamental to the persistence of this larger functioning metapopoulation (Schultz *et al.* in prep) located with the West Eugene Recovery Reserve boundaries (Schultz *et al.* in litt., 2005).

Unit 13 for Fender's blue butterfly (Unit FBB–13):

Unit FBB–13 encompasses approximately 133 ac (54 ha) of private land that supports several patches of primarily *Lupinus arbustus* scattered across the remnant prairie. The Fender's blue butterfly population occupying this unit has been monitored since 1993 (Fitzpatrick 2005). This habitat supports one of the largest remaining butterfly populations and it supports a diverse flora of native plants (Schultz 2004). The habitat included in this unit is very different than the populations growing on the valley floor (Hammond and Wilson 1993). Hammond and Wilson (1993) indicate this population should be regarded as a distinct ecological segregate that should be preserved in a unique population. The size, quality and its unique ecological conditions make this unit essential to the conservation of the species.

Lupinus sulphureus ssp. kincaidii

We present, below, brief descriptions of all units, and reasons they are essential for the conservation of the *Lupinus sulphureus* ssp. *kincaidii.* In total, we propose 16 critical habitat units, each of which represents the habitat containing the features essential to the conservation of core populations across the range of the species. To simplify unit descriptions we have grouped units that are within pollinator distance of one another, and may function as larger, connected metapopulations with proper management and restoration. For many Recovery Reserves we do not have the information at this time to identify lands that provide stepping-stone habitat between units which will likely be needed to meet recovery goals. However, the proposed critical habitat will provide the foundation for *L. sulphureus* ssp. *kincaidii* populations to persist across their range.

Unit 1 of *Lupinus sulphureus* ssp. *kincaidii* (Units KL–1A and 1B):

Units KL–1A and 1B consists of approximately 6 ac (2.5 ha) of private land in Lewis County, Washington. There are only two small populations of *Lupinus sulphureus* ssp. *kincaidii* remaining in Washington. These populations are highly disjunct from the Willamette Valley populations with an estimated 81 miles (131 km) separation. Conservation biology principles include providing for the conservation of a species over a range of habitat types to reduce the chance of losing disjunct populations representing important conservation value for their adaptation to local environmental conditions and their genetic uniqueness (Fahrig and Merriam 1994). In keeping with this principle, the draft recovery criteria for this species identify the need to have populations conserved across their current range (Gisler *et al.*, in litt., 2005). Unit KL–1 (KL–1A and KL–1B) includes the highest quality prairie habitat supporting *L. sulphureus* ssp. *kincaidii* in this northern-most extent of its range. This habitat will likely need to be actively managed to expand the current populations and re-establish lupine patches in relative close proximity (3–5 miles (5–8 km)) to one another. At this time, we do not have enough information to identify additional potential habitat for population expansion, which will likely be necessary for these populations to function as a viable metapopulation and meet delisting criteria. The prairie habitat identified in this unit has the features essential to the conservation of this species because it supports two of the remaining *L. sulphureus* ssp. *kincaidii* populations in the northern-most extent of the species' range, and there is surrounding prairie habitat available for population expansion.

Unit 2 of *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–2 A and 2B):

Unit KL–2A and 2B encompass approximately 6.25 ac (2.5 ha) and 14 ac (5.75 ha) respectively, of private land in northern Yamhill County. KL–2A supports *Lupinus sulphureus* ssp. *kincaidii* patches along both the east and west sides of Oak Creek Road. KL–2B is located approximately 0.68 miles (1.1 km) south of KL–2A along both the east and west sides of Oak Creek Road, near the junction with Fairdale Road. Yamhill County is responsible for roadside maintenance activities along Oak Creek Road that may adversely impact these plant populations. The prairie habitat within KL–2 (KL–2A and 2B) includes the PCEs essential to the conservation of this core population. Habitat management will be necessary to maintain the short-grass stature of the native prairie and provide the habitat conditions essential to the conservation of *L. sulphureus* ssp. *kincaidii.* The Fender's blue butterfly uses *L. sulphureus* ssp. *kincaidii* at this site as a primary host plant and 100 percent of Unit KL–1 is included within Unit FBB–1.

Threats to this *Lupinus sulphureus* ssp. *kincaidii* unit include road maintenance, livestock grazing, and presence of invasive species (Hammond 2004). The distribution of habitat patches in relatively close proximity to each other has likely contributed to the persistence of this population. Impacts to this population over the years have typically affected only one habitat patch at any given time since they are scattered across the prairie habitat. The prairie habitat within KL–2 will likely need to be managed to allow for growth and expansion of this relatively small population in order to meet recovery goals. Severns (2003a) indicates that the stepping-stone reserve design recommended for the conservation of Fender's blue butterfly will also benefit *L. sulphureus* ssp. *kincaidii* populations. Increasing the number of lupine patches in close proximity to one another will likely increase the chances for outcrossing pollination, which is essential to the conservation of this species.

This population will likely need to function with other populations to form a more viable metapopulation in order for the species to persist over the long-term. At this time we do not have enough information to identify additional potential habitat for population expansion that will be necessary for this metapopulation to meet delisting criteria. Although there are other reported occurrences in the general vicinity, those sites did not meet the minimum patch size for draft recovery criteria, were highly degraded, or were roadside without potential for population expansion, and were not considered essential to the conservation of this population. Unit KL–2 provides the habitat essential for the continued persistence of a core population in this portion of species range. This unit has the features essential to the conservation of this species because even with a relatively small population size, it supports one of the largest remaining *Lupinus sulphureus* ssp. *kincaidii* populations, it represents the northern-most Willamette Valley population, and it provides surrounding prairie habitat for population expansion.

Units 3 and 4 of *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–3 and KL–4):

These units each support a *Lupinus sulphureus* ssp. *kincaidii* population that, collectively, may function as a larger metapopulation. These units are located approximately 2.3 miles (3.7 km) apart and likely have at least rare cross pollination events. Active management may be necessary to both enhance these populations and identify opportunities to increase pollinator connectivity between units. At this time we do not have enough information to identify additional potential habitat for population expansion, which will likely be necessary for these populations to function as a larger metapopulation. Although there are other small, mostly roadside populations recorded within the estimated 5 miles (8 km) pollinator distance, most are highly degraded, presumed extinct, or too small to meet Recovery Reserve design criteria, and are not proposed for critical habitat. Each of these units have the features essential to the conservation of the species because they each support the largest remaining populations in this portion of their range, are located in relatively close proximity to one another, increasing potential for cross pollination and increased reproductive success, and there is surrounding prairie habitat available for population expansion.

Unit 3 of *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–3):

Unit KL–3 consists of approximately 51 ac (21 ha) of private lands within Yamhill County. The *Lupinus sulphureus* ssp. *kincaidii* population is comprised of several populations scattered along the east and west sides of Gopher Valley Road near its intersection with Dupee Road. Yamhill County is responsible for roadside maintenance activities along Gopher Valley Road that may adversely impact this population of *L. sulphureus* ssp. *kincaidii*. The largest distance separating lupine populations is approximately 0.12 mi (0.2 km). This population is threatened by the presence of invasive species; the relatively small, isolated nature of the population; and impacts associated with roadside maintenance activities. The Fender's blue butterfly uses *L. sulphureus* ssp. *kincaidii* at this site as a primary host plant, and 100 percent of Unit KL–3 is included in Unit FBB–2.

The prairie habitat within KL–3 should be managed to allow for growth and expansion of this relatively small population. Increasing the number of *Lupinus sulphureus* ssp. *kincaidii* patches in close proximity to one another will increase the chances for outcrossing pollination, which is essential to the conservation of this species. Because of the limited availability of supporting prairie habitat, this population will need to function with other populations as a larger, more viable metapopulation in order to persist over the long term. This prairie habitat should be actively managed in order to maintain the short-grass prairie stature essential for the conservation of *Lupinus sulphureus* ssp. *kincaidii* and provide opportunity for population growth and expansion. Unit KL–3 is essential for the continued persistence of a functioning metapopulation in this portion of the species' range.

Unit 4 of *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–4A and 4B):

Unit KL–4A and 4B consists of approximately 69 ac (28 ha) of private lands in Yamhill County and is located west of Muddy Valley Road and south of Eagle Point Road. The *Lupinus sulphureus* ssp. *kincaidii* populations are relatively small and scattered across this large, contiguous prairie remnant. The *L. sulphureus* ssp. *kincaidii* population within this unit boundary is one of only a few populations supported by extensive areas of the short-grass prairie necessary for population growth and expansion. This habitat should be managed in a way that enhances the *L. sulphureus* ssp. *kincaidii* population so that the plantextends across the available habitat, ideally with populations located between 0.3 and 0.6 mi (0.5 and 1 km) apart, mimicking historic prairie conditions. Unit KL–4 (KL–4A and 4B) provides the habitat that has the features essential for the continued persistence of this core population, and, together with the habitat included in Unit KL–3, these areas are fundamental to the continued persistence of a viable metapopulation in this portion of the species' range.

Summary of Units 5 and 6 of *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–5 and KL–6):

Units KL–5 and KL–6 are both primarily State-owned lands managed by the ODOT, and each support populations of *Lupinus sulphureus* ssp. *kincaidii* in this portion of the species' range that collectively may function as a larger metapopulation. These units are both relatively small, but they are two of the largest remaining populations in this portion of the species' range. In addition, they are within the estimated 5 mi (8 km) pollinator distance of one another, and therefore may be functioning as a larger more viable metapopulation. However, if cross pollination between habitat patches occurs, it is likely a rare event. Active management will likely be necessary to both enhance these populations and identify opportunities to increase pollinator connectivity between units. At this time, we do not have enough information to identify additional potential habitat for population expansion, which will likely be necessary for these populations to regularly function as a larger metapopulation. Although there are other small, mostly roadside populations recorded within the estimated 5 mi (8 km) pollinator distance, most are highly degraded, presumed extinct, or too small to meet Recovery Reserve design criteria and not expected to contribute towards the long-term persistence of this species. Each of these units have the features essential to the conservation of the species because: (1) They support the largest remaining populations in this portion of their range; (2) they are located in relatively close proximity to one another, increasing potential for cross pollination and increased reproductive success; and (3) there is surrounding prairie habitat available for population expansion.

Unit 5 of *Lupinus sulphureus* ssp. *kincaiddi* (Unit KL–5):

Unit KL–5 encompasses approximately 1.7 ac (0.7 ha) of ODOT land in southern Yamhill County and is located south of State Highway 18, east of Ballston Road, and approximately 0.6 mi (1 km) south of the Yamhill River. Although the overall prairie remnant supporting the population is small, the population of *Lupinus sulphureus* ssp. *kincaiddi* is relatively large, with over a 1,000 individuals reported to occupy the unit. The prairie habitat within and between KL–5 and KL–6 should be managed to allow for growth and expansion of these small populations. Severns (2003a) indicates that the stepping-stone reserve design recommended for the conservation of Fender's blue butterfly will also benefit *L. sulphureus* ssp. *kincaiddi* populations. Increasing the number of lupine patches in close proximity to one another will likely increase the chances for outcrossing pollination, which will increase long-term viability of the metapopulation. Unit KL–5 provides the habitat containing the features essential for the continued persistence of this core population and, together with the habitat included in Unit KL–6, is fundamental to the continued persistence of a functioning metapopulation in this portion of the species' range.

Unit 6 of *Lupinus sulphureus* ssp. *kincaiddi* (Unit KL–6):

Unit KL–6 encompasses approximately 3.5 ac (1.5 ha) of primarily ODOT land in northern Polk County. The *Lupinus sulphureus* ssp. *kincaiddi* population occurs in two

patches scattered along the northeast and southwest sides of Highway 22, near the intersection with Mill Creek Road. The Fender's blue butterfly uses the *L. sulphureus* ssp. *kincaiddi* at this site as a primary host plant, and 100 percent of Unit KL–6 is included in Unit FBB–5. Additionally, a small population of Erigeron decumbens var. decumbens occurs at this site. Hammond (2004) has documented that invasive grasses and shrubs have repressed the *L. sulphureus* ssp. *kincaiddi* and E. decumbens var. decumbens populations occupying this prairie remnant. There are also the impacts associated with roadside populations described above in the Special Management Considerations or Protections section.

Although Unit KL–6 has limited available prairie habitat directly adjacent to the area currently supporting the species, mowing activities implemented by ODOT in 2000 resulted in an increase of *Lupinus sulphureus* ssp. *kincaiddi* and Fender's blue butterfly. This demonstrates that appropriate management of this site does provide opportunity for population growth and expansion and, ultimately for the survival of this small population. Unit KL–6 provides the habitat containing the features essential for the continued persistence of the core population, and together with Unit KL–5, strengthens this core reserve area and is fundamental to the continued persistence of a functioning metapopulation in this portion of the species' range. It is likely that other populations occur in the near vicinity because the surrounding area is fairly undeveloped and much of this land has never been surveyed for *L. sulphureus* ssp. *kincaiddi*.

Unit 7 of *Lupinus sulphureus* ssp. *kincaiddi* (Unit KL–7):

Unit KL–7 consists of approximately 12.3 ac (5 ha) of private lands in central Polk County. This unit is located near the junction of Highway 223 and Oakdale Avenue, and largely falls within the City of Dallas' urban-growth boundary. The Fender's blue butterfly uses *Lipinus sulphureus* ssp. *kincaidii* at this site as a primary host plant, and 100 percent of Unit KL–7 is included in Unit FBB–5. This butterfly population was monitored consistently between 1993 and 1997, but not again until May 2004. During the May 2004 field season, we met with the private landowner who owns one of the land parcels currently supporting the population of *L. sulphureus* ssp. *kincaidii* occurring within this unit boundary. We were able to document the extent of the area supporting the PCEs across the landscape and determined that a significant portion of the area historically supporting *L. sulphureus* ssp. *kincaidii* and Fender's blue butterfly populations has been developed into residential lots. Hammond (2004) has documented the removal of several acres of habitat over the last 10 years that had historically supported this population. The landowner we met with in 2004 has entered into a Partners for Fish and Wildlife Agreement (USFWS 2004d) and, in cooperation with Refuge staff, has agreed to manage the portion of Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* habitat occurring on his property. This population is threatened by the presence of invasive species and the impacts associated with the encroachment of urban development.

The area identified within the boundaries of KL–7 includes the features essential to the conservation of this core population in this portion of the species' range. Because of the limited availability of supporting prairie habitat, this population will likely need to function with other populations as a larger, viable metapopulation in order for the species to persist over the long term. At this time, we do not have enough information to specifically identify which surrounding areas supporting the PCEs will likely be necessary for the long-term viability of this larger metapopulation. The open areas to the south support roadside prairie remnants that historically had *Lipinus sulphureus* ssp. *kincaidii* populations that have been extirpated over the last 10 years (Hammond 2004).

Summary of Units 8, 9, and 10 of *Lipinus sulphureus* ssp. *kincaidii* (Units KL–8, KL–9, and KL–10):

These units each support a *Lipinus sulphureus* ssp. *kincaidii* population that, collectively, may function as a larger metapopulation. These units are located approximately 3.7 mi (6 km) apart and may, at least occasionally, be cross-pollinated by insects. Active management will likely be necessary to both enhance these populations and identify opportunities to increase pollinator connectivity between units. Each of these units contain the habitat that have the features essential to the conservation of the species because: (1) They each support a relatively large population; and (2) they are located in relatively close proximity to one another, thus increasing potential for cross pollination and increased reproductive success; and (3) there is surrounding prairie habitat available for population expansion. At this time, we do not have enough information to identify additional potential habitat for population expansion, which may be necessary for these populations to regularly function as a larger metapopulation. Although there are other small, mostly roadside populations recorded within the estimated 5 mi (8 km) pollinator distance, most are highly degraded, presumed extinct, or too small to meet Recovery Reserve criteria, and not expected to contribute towards the long-term persistence; they are therefore not proposed as critical habitat.

Unit 8 of *Lipinus sulphureus* ssp. *kincaidii* (Unit KL–8):

Unit KL–8 consists of approximately 28.2 ac (11 ha) of private and State lands in Benton County. This unit occurs in McDonald Forest located off Oak Creek Road and supports one of the highest quality remaining prairies. The *Lipinus sulphureus* ssp. *kincaidii* occupying this unit is the primary host plant of the Fender's blue butterfly; this site is the second largest known Fender's blue butterfly population, and 100 percent of Unit KL–8 is included in Unit FBB–7. Approximately 14 percent of the lands supporting the PCEs within this unit occurs on Oregon State University lands, and the remaining 86 percent occurs on private lands. The patches of *L. sulphureus* ssp. *kincaidii* occupying Unit KL–8 are scattered across a large contiguous prairie habitat, which is one of few occupied remnants occurring on valley hillsides. Unit KL–8 provides high quality upland prairie habitat, including the short-grass stature necessary to maintain the openness of the habitat. This population is, however, threatened by the encroachment of invasive grasses, particularly *Brachypodium sylvaticum,* and succession to forest, especially in narrow areas of the meadow where tree encroachment could block-off portions of the habitat and reduce connectivity between lupine patches, thus decreasing the potential for successful outcrossing pollination. Although a management plan for this area has not been completed, the unit has been managed for several years to enhance populations of both the Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii*.

The continued management of these lands is essential to the conservation of this population. The prairie habitat identified in Unit KL–8 has the features essential to the conservation of this species because: (1) It is one of the largest remaining contiguous prairie patches supporting a large population of *Lipinus sulphureus* ssp. *kincaidii*; and (2) there is surrounding prairie habitat available for population expansion; and (3) this subpopulation substantially

increases the long-term viability of neighboring populations.

Unit 9 of *Lipinus sulphureus* ssp. *kincaidii* (Unit KL–9):

Unit KL–9 encompasses approximately 48 ac (20 ha) of private lands within Benton County. This unit is located in Wren, Oregon, between Kings Valley Highway, Cardwell Hill Road, and Blakesly Creek Road, approximately 2 mi (3.2 km) southwest of Unit KL–8. The Fender's blue butterfly uses the *Lipinus sulphureus* ssp. *kincaidii* scattered across this unit as a primary host plant, and 100 percent of Unit KL–9 is included in Unit FBB–8. The estimated average distance between lupine patches is 0.6 mi (1 km), providing excellent habitat conditions for outcrossing pollination between lupine individuals.

This historic population was first documented in 1937 (Hammond 2004), and new information has recently been identified about the distribution of the larger *Lipinus sulphureus* ssp. *kincaidii* metapopulation supported across this prairie remnant (Hammond 2004). A new patch of *L. sulphureus* ssp. *kincaidii*, also occupied by the Fender's blue butterfly, has been documented within this prairie remnant and is located between the two populations that have been monitored annually (Hammond 2004). The relatively ''pristine'' (Hammond 2004), large, prairie habitat included within this unit provides the short-grass prairie stature required for expansion of the *L. sulphureus* ssp. *kincaidii* population. The prairie habitat identified in Unit KL–9 has the features essential to the conservation of this species because: (1) It is one of the largest remaining contiguous prairie patches supporting a large population of *L. sulphureus* ssp. *kincaidii*; (2) it provides opportunity for population expansion; and (3) this population substantially increases the long-term viability of neighboring populations.

Unit 10 of *Lipinus sulphureus* ssp. *kincaidii* (Unit KL–10):

Unit KL–10 consists of approximately 18 ac (7 ha) of private lands within Benton County and is located north of Philomath, with the habitat occurring primarily to the south of West Hills Road and to the west of 19th Street. This unit provides the features essential to the *Lipinus sulphureus* ssp. *kincaidii* population that serves as the primary host plant for a large population of Fender's blue butterfly. All of the area within Unit KL–10 is included in Unit FBB–9. The Greenbelt Land Trust recently obtained a conservation easement for the habitat and began managing prairie to enhance the areas supporting the features essential to the conservation of both the *L. sulphureus* ssp. *kincaidii* and Fender's blue butterfly populations.

Threats to this site include encroachment of invasive species, trees, and shrubs. A small portion of Unit KL–10 is located along West Hills Road and is impacted by roadside maintenance activities. The long-term viability of this unit will depend on active management that maintains the short-grass prairie habitat within this unit and provides opportunity to expand the existing population of *Lupinus sulphureus* ssp. *kincaidii*. The continued management of these lands is essential to the conservation of this population. The prairie habitat identified in Unit KL–10 has the features essential to the conservation of this species because: (1) It is one of the highest quality remaining prairie patches supporting *L. sulphureus* ssp. *kincaidii*; (2) there is surrounding prairie habitat available for population expansion; and (3) this population substantially increases the long-term viability of neighboring populations.

Units 11 and 12 of *Lupinus sulphureus* ssp. *kincaidii* (Units KL–11 and KL–12):

Units KL–11 (KL–11A, 11B, 11C, 11D, and 11E) and KL–12 (KL–12A, 12B, 12C, 12D, and 12E) collectively represent a series of upland habitat patches distributed across West Eugene interspersed with wet prairie habitat patches. This extensive network of wetland and upland prairie does not occur anywhere else in the Willamette Valley. Units KL–12A, 12B and 12C collectively provide a series of stepping-stone habitat patches between the *Lupinus sulphureus* ssp. *kincaidii* populations supported by habitat within KL–12D and KL–12E and those populations occupying Unit KL–11. Increasing the number of lupine patches in close proximity to one another increases the chances for outcrossing pollination, which is required for successful reproduction. Both of these units contain the habitat that have the featues essential to the conservation of the species because: (1) They each support the largest remaining *L. sulphureus* ssp. *kincaidii* populations in this portion of their range; (2) they are located in relatively close proximity to one another, thus increasing potential for cross pollination and increased reproductive success; and (3) there is substantial surrounding prairie habitat available for population expansion. Although there are other small, mostly roadside populations recorded within the estimated 5 mi (8 km) pollinator distance, most are highly degraded, presumed extinct, or too small to meet Recovery Reserve criteria, and therefore not proposed as critical habitat.

Unit 11 of *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–11A, 11B, 11C, 11D, and 11E):

Unit KL–11 encompasses approximately 65 ac (26 ha) of prairie habitat distributed across Federal and private lands in Lane County. This unit is located in west Eugene, near the Fern Ridge Reservoir, just south of Clearlake Road, and on both the east and west sides of Fir Butte Road. The area included in Units KL–11A, 11B, 11C, 11D, and 11E, collectively represent the areas containing the habitat that has the features essential to the conservation of a currently functioning *Lupinus sulphureus* ssp. *kincaidii* metapopulation. The Fender's blue butterfly uses the *L. sulphureus* ssp. *kincaidii* within this unit as a primary host plant and 100 percent of Unit KL–11 is included in Unit FBB–10.

The habitat within Unit KL–11 primarily occurs on Federal land managed by the BLM and Corps, with 12 percent occurring on private land. The *Lupinus sulphureus* ssp. *kincaidii* populations occurring in KL–11A, 11B, 11C, and 11D are scattered across the area and form separate habitat patches that encircle the northeast edge of the Fern Ridge Reservoir. Although the Corps actively manages most of the habitat supporting these populations, they all remain threatened by the presence of invasive grasses, predominantly *Arrhenatherum elatius* (tall oat grass), which limits the overall diversity of the site and the opportunity for population growth (Severns 2004). *Lupinus sulphureus* ssp. *kincaidii* occupying KL–11E is relatively sparsely distributed across the entire subunit, making it difficult to identify separate *L. sulphureus* ssp. *kincaidii* patches. This subunit is severely threatened by the presence of exotic species, primarily *Rubus discolor*. Although Unit KL–11 does not provide the highest quality habitat, it manages to support some of the largest remaining populations of *L. sulphureus* ssp. *kincaidii* in this portion of its range. The habitat included within Unit KL–11 provides the features essential for the continued persistence of this metapopulation and provides the foundation of the Recovery Reserve necessary in this portion of the species' range.

Unit 12 of *Lupinus sulphureus* ssp. *kincaidii* (Units KL–12A, 12B, 12C, 12D, and 12E):

Unit KL–12 encompasses approximately 141 ac (57 ha) of prairie habitat that is distributed across Federal and private lands in Lane County. This unit is in west Eugene and is located

north of Bailey Hill Road and west of Bertelsen Road. This unit primarily occurs on lands owned by TNC and the BLM, with 4 percent occurring on private lands. The area included in KL–12A, 12B, 12C, 12D, and 12E, collectively represent the areas containing the habitat that has the features essential to the conservation of a functioning *Lupinus sulphureus* ssp. *kincaidii* metapopulation. The Fender's blue butterfly uses the *L. sulphureus* ssp. *kincaidii* occupying this unit as a primary host plant, and 100 percent of Unit KL–12 is included in Unit FBB–12. KL–12D and 12E are owned by TNC and support the highest quality upland prairie remaining in this portion of the species' range. *Lupinus sulphureus* ssp. *kincaidii* is scattered across the prairie habitat in KL–12D and 12E and forms four distinct lupine patches that are separated by an estimated maximum distance of 0.3 mi (0.5 km). The habitat is actively managed for *L. sulphureus* ssp. *kincaidii*, and the long-term goal for TNC's lands is to eventually restore all available upland habitat and expand the population size. These units have the habitat containing the features essential to the conservation of this metapopulation because they: (1) Provide the highest quality remaining habitat; (2) support one of the largest remaining populations of *L. sulphureus* ssp. *kincaidii*; and (3) provide habitat necessary for population growth.

Unit KL–12C supports a relatively small population of *Lupinus sulphureus* ssp. *kincaidii* occurring on private land, just north of West 11th Avenue. Unit KL–12B also supports a relatively small population of *L. sulphureus* ssp. *kincaidii* occurring on lands owned and managed by the BLM that are located east of Green Hill Road and north of West 11th Avenue. Unit KL–12A supports another relatively small population of *L. sulphureus* ssp. *kincaidii* occurring on land primarily owned and managed by the BLM and is located east of Green Hill Road and north of West 11th Avenue. Units KL–12A, 12B, and 12C, collectively provide a series of stepping-stone habitat patches between the *L. sulphureus* ssp. *kincaidii* populations owned and managed by TNC and the those populations occupying Unit KL–11.

Unit 13 of *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–13):

Unit KL–13 encompasses approximately 16 ac (7 ha) of private land in Lane County, and is located north of Powell Road and west of Coyote Creek. The prairie habitat included in this unit supports the southernmost population of *Lupinus sulphureus* ssp. *kincaidii* occurring in the Willamette Valley. The patches of *L. sulphureus* ssp. *kincaidii* are scattered across the available prairie habitat and include some of the densest plant stands observed (USFWS 2004a, 2004e). Although there are no known occurrences of *L. sulphureus* ssp. *kincaidii* within pollinator distance of this population, it may be the healthiest population of this plant remaining. The habitat is threatened by the presence of invasive species such as Cytisus scoparius (Scotch broom), and the landowner manually removes the exotic species in order to maintain the conditions required for *L. sulphureus* ssp. *kincaidii* to persist. Unit KL–13 has the features that are essential to the conservation of the species because: (1) It supports possibly the largest remaining *L. sulphureus* ssp. *kincaidii* population, (2) is surrounded by high quality prairie that provides opportunity for population growth and expansion, and (3) is the southernmost population remaining in the Willamette Valley.

Unit 14 of *Lupinus sulphureus* ssp. *kincaidii* (Units KL–14A and B):

Unit KL–14A encompasses approximately 24 ac (10 ha) of land owned and managed by the BLM within central Douglas County. This unit is located north of the intersection of Myrtle Road and Myrtle Creek Road, and includes habitat on both sides of the roadbanks and road cuts on south-facing slopes. This population of *Lupinus sulphureus* ssp. *kincaidii* uniquely occurs on a fringe of habitat between the roadside and the young, replanted forests, and beyond into a young *Calocedrus decurrens, Toxicodendron diversiloba,* and *Ceanothus integerrimus* woodland. The primary threat to this population is forest succession that could encroach and shade out the population. Construction of firebreaks is a secondary threat.

This population has survived recurring fires, and a failed attempt to reforest with *Pseudotsuga menziesii. Lupinus sulphureus* ssp. *kincaidii* occurs in several small patches linked by roads and obsolete skid trails. There is an extensive amount of suitable habitat for the population to expand. Additionally, this population is within pollinator distance of KL–14B, increasing the potential for outcrossing pollination and therefore the viability of both of these units.

Unit KL–14B encompasses approximately 3 ac (1.2 ha) of exclusively private land in central Douglas County. This unit is located between North Myrtle Creek and Riser Creek and is approximately 0.93 mi (1.5 km) southeast of Unit KL–14A. This population occurs under a canopy of 25- to 35-year-old *Pseudotsuga menziesii, Arbutus menziesii, and Calocedrus decurrens.* Plants in this population represent a unique habitat type because they exist on a fringe of habit between the roadside and the replanted forests, have survived recurring fires, and have co-existed with logging activities. The primary threats to this population are forest succession that could encroach and shade out the population, and, secondarily, construction of firebreaks for fire suppression.

The Douglas County populations of *Lupinus sulphureus* ssp. *kincaidii* occur in different habitat conditions than the Willamette Valley populations. These populations are more shade-tolerant, and overall more adaptable to extreme habitat conditions. It is essential to conserve a species across its range of habitat types in order to reduce the chance of losing disjunct populations that represent adaptation to local environmental conditions and unique genetic variation (Fahrig and Merriam 1994). This unit has the features essential to the conservation of the species because: (1) It supports two of the largest remaining populations in Douglas County; (2) the populations are located within pollinator distance of one another, providing the opportunity for these populations to function as a larger metapopulation; and (3) this is one of the most vigorous remaining *L. sulphureus* ssp. *kincaidii* populations in the southernmost extent of the species' range.

Unit 15 of *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–15A and 15B):

Unit KL–15 encompasses approximately 10.7 ac (4.4 ha) of federally and privately owned lands in southern Douglas County. KL–15A includes 2.3 ac (0.9 ha) of Federal land; KL–15B encompasses 8.4 ac (3.5 ha) of private land. These units are located west of Stouts Creek, with the *Lupinus sulphureus* ssp. *kincaidii* patches occurring on road banks and road cuts in a hilly area. Plants occur within 100 feet of roads except for one portion that extends to about 1,000 feet from the road along a slight slope. This area was logged prior to 1980, and burned during fires in 1972 and 1988. The primary threat to this site is forest succession; firebreak construction is a secondary threat. This one of the largest populations of healthy plants in Douglas County with evidence of recruitment across Douglas County. Plants in this population exist on a fringe of habitat between the roadside and the replanted forests and have survived recurring fires. The population occurs in several small patches linked by the roads and obsolete skid trails. There is an

extensive amount of suitable habitat for the population to expand. The habitat supporting this relatively large population of *L. sulphureus* ssp. *kincaidii* contains the features essential to the conservation of this species across its range, as it: (1) Supports one of three populations occurring at this southernmost extent of it range; and (2) occurs in the unique Douglas County habitat conditions.

Unit 16 of *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–16A and 16B):

Unit KL–16 encompasses approximately 66 ac (26.7 ha) of federally-owned land managed by the BLM and is located west of Elk Creek, with the edge of an incense cedar treeline in partial shade. KL–16A encompasses 19.2 ac (7.8 ha) includes two lupine patches that occur within 3.4 mi (5.5 km) of two other *Lupinus sulphureus* ssp. *kincaidii* populations (KL–16B) that are in the same meadow system. KL–16B encompasses 46.3 ac (18.8 ha). This system is similar to the habitat conditions supporting the Willamette Valley populations and unlike the other *L. sulphureus* ssp. *kincaidii* occurrences in Douglas County. The unique meadow is on a slight slope with a northwest aspect and is the only *L. sulphureus* ssp. *kincaidii* population that occurs close to a large band of serpentine geology.

The habitat is threatened by cattle grazing and shows evidence of inbreeding depression, is evidently unable to reproduce by seed, and is suspected to be a single clone. The Roseburg office of BLM has been actively managing the population patches by: (1) Monitoring the population for the past four years; (2) establishing fences to prevent cattle from encroaching into *Lupinus sulphureus* ssp. *kincaidii* habitat; and (3) scoping methods for reducing fuels to enhance habitat. This unit contains the habitat that has the features essential to the conservation of *L. sulphureus* ssp. *kincaidii* across its range because it supports one of the three largest remaining populations occurring at the southernmost extent of this species' range.

Erigeron decumbens var. decumbens

We present brief descriptions of all units, and reasons why they are essential for the conservation of the *Erigeron decumbens* var. *decumbens,* below.

Unit 1 for *Erigeron decumbens* var. *decumbens* (Units WD–1A and 1B):

Units WD–1A and 1B encompasses approximately 41 ac (17 ha) of Federal land occurring in northern Polk County. This unit is located adjacent to Highway 22, approximately 5.6 mi (9 km) northeast of the City of Dallas. There are two distinct populations (1A and 1B) located on the Baskett Slough National Wildlife Refuge, approximately 0.9 mi (1.5 km) apart. Unit 1B is located on Baskett Butte summit and coexists with the largest remaining Fender's blue butterfly populations. The prairie habitat supporting these *Erigeron decumbens* var. *decumbens* populations is currently being managed for the species. Units WD–1A and 1B contain the habitat that has the features essential to the conservation of the species because they support the only remaining viable population of *E. decumbens* var. *decumbens* within Polk County, which represents the northernmost extent of the species' range. Although there are other reported occurrences in the general vicinity, these sites did not meet the minimum patch size for draft recovery criteria, were highly degraded, or were believed to be extirpated sites and, therefore, were not proposed as critical habitat.

Unit 2 for *Erigeron decumbens* var. *decumbens* (Unit WD–2):

Unit WD–2 encompasses approximately 12 ac (5 ha) of private land occurring in southern Marion County. This unit occurs south of SE Triumph Road and east of SE Boedigheimer Road, and supports the largest remaining *Erigeron decumbens* var. *decumbens* population in Marion County. Although this unit is privately owned, the Bonneville Power Administration holds an easement to maintain the powerline right-of-way that bisects the unit. This *E. decumbens* var. *decumbens* population is supported in a relatively large patch of high quality prairie that includes a diverse mix of prairie indicator species. Threats to the site include the presence of invasive species, population isolation including risk of inbreeding depression, and maintenance activities in the powerline right-of-way. Unit WD–2 contains the habitat that has the features essential to the conservation of the species because it supports the only remaining core population in Marion County and and it supports a large population in high quality habitat with the opportunity to increase population size and maintain a viable population. Although there are other reported occurrences in the general vicinity, those sites did not meet the minimum patch size for draft recovery criteria, were highly degraded, or were believed to be extirpated sites and, therefore, were not proposed as critical habitat.

Unit 3 for *Erigeron decumbens* var. *decumbens* (Units WD–3A, 3B, and 3C):

Unit WD–3 encompasses approximately 59 ac (24 ha) of private land occurring within northern Linn County. This site is located north of SE Kingston Lyons Drive and on both the east and west sides of Huntly Road, and is primarily owned by TNC. This population of *Erigeron decumbens* var. *decumbens* occurs in a relatively large patch of high quality prairie that supports a diverse mix of prairie indicator species. The *E. decumbens* var. *decumbens* populations are distributed across the prairie remnant in three distinct habitat patches (WD–3A, 3B, and 3C). Threats to this site include the presence of invasive species and population isolation including risk of inbreeding depression. TNC is managing the habitat supporting this population to allow for population expansion and reduce the distance between *E. decumbens* var. *decumbens* plant patches. Unit WD–3 contains the habitat that has the features essential to the conservation of the species: (1) Because it supports the only remaining viable population within all of Linn County; (2) supports a large population in high quality habitat with the opportunity to increase population size and establish a viable population; and (3) represents the easternmost extent of the species' range. Although there are other reported occurrences in the general vicinity, those sites did not meet the minimum patch size for draft recovery criteria, were highly degraded, were roadside without potential for population expansion, or were believed to be extirpated sites and, therefore, were not proposed as critical habitat.

Unit 4 for *Erigeron decumbens* var. *decumbens* (Units WD–4A and 4B):

Unit WD–4 encompasses approximately 9.3 ac (3.7 ha) of private and City of Corvallis (City) land occurring in Benton County. This unit is located north of SW Reservoir Avenue and south of NW Oak Creek Drive. Approximately half of the habitat within this unit is located on City land and half on private land. The habitat supporting this population of *Erigeron decumbens* var. *decumbens* occurs in two distinct habitat patches (WD–4A and 4B) approximately 0.6 mi (1 km) apart. A portion of the *E. decumbens* var. *decumbens* population occupying this unit occurs along a hiking trail located on private land with a City access easement. Threats to this unit include woody encroachment, trail maintenance, and the small size and isolated nature of the population. There are only two other reported occurrences in Benton County: One population in Unit WD–5 and a second population encompassing 300 square ft (28 square

m) within the boundary of the William Finley National Wildlife Refuge.

Although the *Erigeron decumbens* var. *decumbens* population occupying this unit is relatively small, it is one of the largest remaining populations in this portion of the species' range and is supported by a large habitat patch with a moderate diversity of indicator species. Additional habitat will likely be necessary to support other populations in close proximity, to allow these areas to collectively function as a larger metapopulation, and to meet the Recovery Reserve criteria necessary for delisting. At this time, we do not have enough information to identify how much additional habitat may be needed or where population expansion is feasible. Unit WD–4 contains the habitat that has the features essential to the conservation of the species because it supports one of three remaining populations in Benton County and has a moderate size population with enough available habitat to provide for population growth and expansion. This unit supports a core population fundamental to the continued persistence of the species in this portion of its current range.

Unit 5 for *Erigeron decumbens* var. *decumbens* (Unit WD–5):

Unit WD–5 consists of approximately 38.5 ac (15.6 ha) of private land, south of Corvallis, in Benton County. This unit is located along Muddy Creek, just to the west of Cutler Lane. The Greenbelt Land Trust is currently working with the landowner to place a conservation easement on the property, and, in cooperation with the Service, they plan to restore and enhance native habitats within the unit. Unit WD–5 contains the habitat that has the features essential to the conservation of the species because it supports the largest population of *Erigeron decumbens* var. *decumbens* in Benton County, includes substantial habitat for population expansion, and supports the core population fundamental to the continued persistence of the species in this portion of its current range. Although additional habitat will likely be necessary to support other populations that collectively function as a larger metapopulation and to meet the Recovery Reserve criteria necessary for delisting, at this time, we do not have sufficient information to identify how much additional habitat may be needed or where population expansion is feasible.

Summary of Units 6, 7, 8, and 9 for *Erigeron decumbens* var. *decumbens* (Units WD–6, WD–7, WD–8, and WD–9):

Units WD–6, WD–7, WD–8, and WD–9 occur in West Eugene, Oregon, and collectively represent the largest, most-connected, functional network of suitable prairie habitat for *Erigeron decumbens* var. *decumbens*. Units WD–6, WD–7, WD–8, and WD–9 contain the habitat that has the features essential to the conservation of this species because they each support stable populations and, collectively, these units support the only large metapopulation of *E. decumbens* var. *decumbens* across its current range; this network of habitat will need to remain intact to ensure the continued persistence of this species. As described in the unit descriptions for WD–1 through WD–5 above, there are very few extant populations of *E. decumbens* var. *decumbens* documented outside of Eugene. Units WD–1 to WD–5 are essential for the continued persistence of *E. decumbens* var. *decumbens* across its current range due to their limited distribution. It is important to note that in order for core populations occupying Units WD–1 to WD–5 to persist over the long term, each unit should be managed to allow for population expansion and additional habitat will likely be needed.

Since Units WD–6, WD–7, WD–8, and WD–9 support the only large metapopulation of *E. decumbens* var. *decumbens* across its current range the habitat supporting these populations provide the highest probablility for long-term persistence of the species. Any reduction of available habitat will create more edge effect, increase habitat fragmentation, reduce outcrossing pollination potential, and further reduce population viability. Units WD–6, WD–7, WD–8, and WD–9 are threatened to varying degrees by the encroachment of invasive species and active management will be necessary to ensure the long-term persistence of this large metapopulation. Additionally, habitat enhancement may be necessary to expand populations across this metapopulation and increase connectivity. Our critical habitat units were designed to select for the largest, highest quality habitat patches with the potential for population growth. Therefore, the units selected for critical habitat in Eugene represent only those areas that meet the Recovery Reserve criteria necessary for delisting. Although there are other reported occurrences of *Erigeron decumbens* var. *decumbens* in the general vicinity, those sites did not meet the minimum patch size for draft recovery criteria, or were highly degraded, and were therefore not included in proposed critical habitat.

Unit 6 for *Erigeron decumbens* var. *decumbens* (Units WD–6A, 6B, 6C, and 6D):

Unit WD–6 encompasses approximately 85 ac (35 ha) of primarily Federal land with an estimated 11 percent occurring on private land. This unit is located in Eugene, along Ken Neilsen Road and West 11th Avenue. The federally owned land includes both BLM and Corps lands. WD–6A supports one of the largest remaining populations of *Erigeron decumbens* var. *decumbens*, occurs on Corps lands, and is located on the northwestern edge of this relatively large metapopulation.

Unit WD–6 contains the habitat that has the features essential to the conservation of this species because it supports a stable population and, collectively with WD–7 to WD–9, these units support the only large metapopulation of *E. decumbens* var. *decumbens* across its current range; this network of habitat will need to remain intact to ensure the continued persistence of this species.

Unit 7 for *Erigeron decumbens* var. *decumbens* (Units WD–7A and WD–7B):

Unit WD–7A consists of approximately 22.5 ac (9 ha) of primarily Federal land with 2 percent occurring on private land. WD–7A is located to the west of Green Hill Road and to the north of West 11th Avenue, and is managed by the Corps. The habitat included within this unit boundary supports a moderately sized *Erigeron decumbens* var. *decumbens* population with habitat available for population expansion.

Subunit WD–7B encompasses approximately 143 ac (58 ha) of primarily Federal land with an estimated 22 percent occurring on private land. This subunit is located near the intersection of Green Hill Road and West 11th Avenue. *Erigeron decumbens* var. *decumbens* is patchily distributed across the subunit with enough supporting habitat to allow for population growth. The *E. decumbens* var. *decumbens* populations supported by WD–7A and 7B are less than 0.6 miles (1 km) from the nearest neighboring daisy population, providing for pollinator connectivity between habitat patches and increasing the potential for successful reproduction.

Unit WD–7 contains the habitat that has the features essential to the conservation of this species because it supports a stable population and, collectively with WD–6, WD–8 and WD–9, these units support the only large metapopulation of *E. decumbens* var. *decumbens* across its current range; this network of habitat will need to

remain intact to ensure the continued persistence of this species.

Unit 8 for *Erigeron decumbens* var. *decumbens* (Units WD–8A, WD–8B, WD–8C, WD–8D, and WD–8E):

Subunits WD–8A and 8B consists of approximately 129 ac (55 ha) of Federal and private lands in West Eugene, Oregon. These subunits are located near the intersection of Willow Creek and West 18th Avenue. An estimated 45 percent of this area occurs on private land with approximately 55 percent occurring on BLM land. The western half of subunit WD–8A includes high quality remaining wet prairie; the eastern portion of the site includes much lower quality habitat. WD–8A is a relatively large remnant prairie and provides excellent opportunity for population growth and expansion. WD–8B is located approximately 0.3 mi (0.5 km) directly east of WD–8A. This habitat patch is located directly north of TNC's land, which is currently being managed for *Erigeron decumbens* var. *decumbens.* The location of these subunits, in close proximity to one another increases the overall quality and viability of this metapopulation.

Subunit WD–8C encompasses approximately 2.5 ac (1 ha) of private land located east of Wallis Street within the City of Eugene. This site supports a relatively small population of *Erigeron decumbens* var. *decumbens* on good quality wet prairie habitat with a diverse species composition. The site is located within 1.5 mi (2.5 km) of WD–9B. This subunit provides habitat for population growth and expansion. The *E. decumbens* var. *decumbens* plants occurring in this unit, Unit WD–6, and Unit WD–7 are all in close proximity to one another, thus increasing the potential for cross pollination between populations and reducing the risk of inbreeding depression. The primary threat to this habitat is that it is surrounded by development, reducing pollinator connectivity to the other populations. However, since this habitat is in close proximity to other populations, this *E. decumbens* var. *decumbens* site has a much higher chance of cross pollination than most remaining isolated populations.

Subunits WD–8D and 8E consist of approximately 79 ac (30 ha) of prairie habitat that is owned by TNC. These subunits are located just south of West 18th Avenue along Willow Creek. These subunits include high quality prairie and support the second largest *Erigeron decumbens* var. *decumbens* population located in Eugene. These subunits provide sufficient habitat to support population growth and expansion, and are located less than 1.2 mi (2 km) from neighboring *E. decumbens* var. *decumbens* populations. This large, connected, high quality habitat provides one of the core areas contributing towards the long-term conservation of Unit WD–8.

Unit WD–8 contains the habitat that has the features essential to the conservation of this species because it supports a stable population and, collectively with WD–6, WD–7, and WD–9, these units support the only large metapopulation of *E. decumbens* var. *decumbens* across its current range; this network of habitat will need to remain intact to ensure the continued persistence of this species.

Unit 9 for *Erigeron decumbens* var. *decumbens* (Unit WD–9A, WD–9B, WD–9C, WD–9D, and WD–9E):

Subunit WD–9A encompasses an estimated 90 ac (36 ha) of private land and is located approximately 1.2 mi (2 km) east of the intersection of Pine Grove Road and Crow Road. The *Erigeron decumbens* var. *decumbens* population occupying this unit is scattered in a few patches across this large prairie remnant. The habitat included within this unit includes high quality prairie with extensive habitat available to support population growth and expansion. This unit is located approximately 1.2 mi (2 km) north of the closest known *E. decumbens* var. *decumbens* population, increasing the long-term viability of both populations due to increased pollinator accessibility between plant patches.

Subunits WD–9B and 9C consist of approximately 1 ac (0.25 ha) of private land and are located east of Pine Grove Road and south of Crow Road. Although this is a relatively small site, it is located on a high quality prairie remnant that supports a diversity of native composition. The *Erigeron decumbens* var. *decumbens* populations occupying these subunits occur in patches scattered around a stand of oak and *Pinus ponderosa* (ponderosa pine). These subunits are located between WD–9A, WD–9D, and WD–9E, and increase the potential for outcrossing pollination of all Unit WD–9 populations.

Subunits WD–9D and WD–9E encompass approximately 2 ac (0.75 ha) of private land and are located north of Spencer Creek Road and east of Pine Grove Road. These subunits include high quality wet prairie with a highly diverse species composition and support hundreds of *Erigeron decumbens* var. *decumbens* plants. This population occurs at the southernmost extent of the species' range, with Unit WD–9C located approximately 1.9 miles (3 km) to the north.

Unit WD–9 contains the habitat that has the features essential to the conservation of this species because it supports a stable population and, collectively with WD–7 to WD–9, these units support the only large metapopulation of *E. decumbens* var. *decumbens* across its current range; this network of habitat will need to remain intact to ensure the continued persistence of this species.

Effects of Critical Habitat Designation

Section 7 Consultation

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 their 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 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.

Federal activities that may affect the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* or their 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 U.S. Army Corps of Engineers 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.

Each of the areas proposed for designation in this rule have been determined to contain sufficient PCEs to provide for one or more of the life history functions of the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens*. In some cases, the PCEs exist as a result of ongoing federal actions. As a result, ongoing federal actions at the time of designation will be included in the baseline in any consultation conducted subsequent to this designation.

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 also may jeopardize the continued existence of the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens.* Federal activities that, when carried out, may adversely affect critical habitat for the Fender's blue butterfly, *L. sulphureus* ssp. *kincaidii*, or *E. decumbens* var. *decumbens* include, but are not limited to:

(1) Actions that would further degrade, or destroy, prairie habitat supporting populations of Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens*. Such activities could include, but are not limited to, the removal or destruction of prairie habitat by grading, leveling, plowing, mowing, burning, operation of motorized equipment, herbicide spraying, or intensive grazing. These activities could eliminate or reduce the habitat necessary for Fender's blue butterfly by removing the host plant essential for reproduction and larval feeding, as well as adult nectaring plants. Additionally, removal or destruction of habitat further isolates populations and increases the risk of inbreeding depression. Implementation of these activities in prairie habitat supporting L. sulphureus ssp. kincaidii or E. decumbens var. decumbens could directly eliminate individuals and eliminate the potential for essential population growth and expansion in the available ''open spaces'' of native short-grass prairie habitat.

(2) Actions that further isolate populations of Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens* from other extant locations within a unit or between subunits. Such activities could include, but are not limited to, the construction or expansion of roads, houses, buildings, or infrastructure that limit dispersal of the Fender's blue butterfly between lupine patches, and limit the dispersal of plant pollinators between *L. sulphureus* ssp. *kincaidii* and *E. decumbens* var. *decumbens* populations. These activities reduce the opportunity for population growth and decrease genetic diversity by limiting normal breeding behaviors.

All critical habitat units are within the geographic ranges of these species, and all were occupied by these species at the time of listing. All units are likely to be used by Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens* to carry out important life history functions. We consider all of the units included in this proposed designation to be essential to the conservation of the Fender's blue butterfly, *L. sulphureus* ssp. *kincaidii*, or *E. decumbens* var. *decumbens*. When analyzing whether the effects of those actions described above constitute adverse modification or destruction of critical habitat, the Service would determine whether the action precludes the ability of any given unit to provide the PCEs. In considering whether loss of the PCEs contributes to adverse modification, the Service will consider the purpose for which any given unit was determined to be essential and designated as critical habitat. Since all units are deemed essential to conservation of each of these species, the loss of any one unit's ability to provide the PCEs, or to function as it was intended, would likely result in a finding of adverse modification of critical habitat. 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.

The most direct, and potentially largest regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation pursuant to section 7 of the Act to ensure that they are not likely to destroy or adversely modify critical habitat. There are two limitations to this regulatory effect. First, it only applies where there is a Federal nexus—if there is no Federal nexus, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, it only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure those areas that contain the physical and biological features essential to the conservation of the species or unoccupied areas that are essential to the conservation of the species are not eroded. Critical habitat designation alone, however, does not require specific steps toward recovery.

Once consultation under section 7 of the Act is triggered, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the listed species or its critical habitat. However, if the Service determines through informal consultation that adverse impacts are likely to occur, then formal consultation would be initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat, with separate analyses being made under both the jeopardy and the adverse modification standards. For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not contain any mandatory reasonable and prudent measures or terms and conditions. Mandatory reasonable and prudent alternatives to the proposed Federal action would only be issued when the biological opinion results in a jeopardy or adverse modification conclusion.

We also note that for 30 years prior to the Ninth Circuit Court's decision in *Gifford Pinchot*, the Service equated the jeopardy standard with the standard for destruction or adverse modification of

critical habitat. The Court ruled that the Service could no longer equate the two standards and that adverse modification evaluations require consideration of impacts on the recovery of species. Thus, under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species. However, we believe the conservation achieved through implementing management plans is typically greater than would be achieved through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project and they are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Thus, any management plan which considers enhancement or recovery as the management standard will always provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the Gifford Pinchot decision.

If you have questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat, please contact the State Supervisor, Oregon Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Division, 911 NE 11th Ave., Portland, Oregon 97232 (telephone 503/231–6158).

Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species at the time of listing on which are found those physical and biological features (i) essential to the conservation of the species and (ii) which may require special management considerations or protection. Therefore, areas within the geographic area occupied by the species at the time of listing that do not contain the features essential for the conservation of the species are not, by definition, critical habitat. Similarly, areas within the geographic area occupied by the species at the time of listing that do not require special management or protection also are not, by definition, critical habitat. To determine whether an area requires special management, we first determine if the essential features located there generally require special management to address applicable threats. If those features do not require special management, or if they do in general but not for the particular area in question because of the existence of an adequate management plan or for some other reason, then the area does not require special management.

We consider a current plan to provide adequate management or protection if it meets three criteria: (1) The plan is complete and provides a conservation benefit to the species (i.e., the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the conservation management strategies and actions will be implemented (i.e., those responsible for implementing the plan are capable of accomplishing the objectives, and have an implementation schedule or adequate funding for implementing the management plan); and (3) the plan provides assurances that the conservation strategies and measures will be effective (i.e., it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives).

Section 318 of the fiscal year 2004 National Defense Authorization Act (Pub. L. 108–136) amended the Endangered Species Act to address the relationship of INRMPs to critical habitat by adding a new section 4(a)(3)(B). This provision prohibits the Service from designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary of the Interior determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

Further, 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 use both the provisions outlined in sections 3(5)(A) and 4(b)(2) of the Act to evaluate those specific areas proposed for designation as critical habitat. Lands that we may find do not meet the definition of critical habitat under section 3(5)(A) or that we may exclude pursuant to section 4(b)(2) may 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 HCPs that cover the species, (2) draft HCPs that cover the species and have undergone public review and comment (i.e., pending HCPs), (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. In addition, after reviewing comments on this proposal, the draft economic analysis and comments on the draft economic analysis (see below), we may exclude areas under either of these sections of the Act that are not proposed for exclusion in these notices.

Oregon National Guard Camp Adair

The Oregon Military Department (OMD) (i.e., Joint Force Headquarters of the Oregon Army and Air National Guard) completed an INRMP for Camp Adair in September 2001. The INRMP contained a management plan for *Lupinus sulphureus* ssp. *kincaidii* with specific goals to maintain and create a healthy plant population by implementing the following management measures: Avoidance of known plant locations, suppression of invasive species, restoration of native ecosystems, and monitoring on a 3-year schedule. Active management began in 1999 with posting of off-limits signs around the lupine patches. In 2001 and 2002, restoration activities were implemented around lupine patches to control woody vegetation and exotic species. Specific management activities include herbicide applications (broadcast and backpack), hand pulling and machete cutting. The June 2002 monitoring report documents a 34 percent increase in square meters occupied by *L. sulphureus* ssp. *kincaidii*, likely due to the active management that began in 1999. In an electronic correspondence dated June 6, 2005, Camp Adair's Environmental Program Manager indicated that they were proceeding with hiring staff to

complete the scheduled 2005 monitoring. Lands managed by Camp Adair are not included in the proposed critical habitat because an INRMP is in place that provides a framework for managing natural resources for *L. sulphureus* ssp. *kincaidii* and provides a benefit to the species.

Economic Analysis

An analysis of the economic impacts of proposing critical habitat for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* 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://www.fws.gov/pacific/oregonfwo/EndSpp/ESA-Actions/CritHabWillametteValley-05.htm*, or by contacting our Oregon Fish and Wildlife Office directly (see **ADDRESSES**).

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 and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will provide copies of this proposed rule to peer reviewers 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 comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period (see **DATES**). We will schedule public hearings on this proposal, 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 and notices that are easy to understand. We invite 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 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 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, which will be available for public comment, 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.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on Section 7 Consultation. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments. The draft economic analysis can be obtained from our Internet website at *http://www.fws.gov/pacific/oregonfwo/EndSpp/ESA-Actions/CritHabWillametteValley-05.htm* or by contacting our Oregon Fish and Wildlife Office directly (see **ADDRESSES**).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Our assessment of economic effect will be completed prior to final rulemaking based upon review of the draft economic analysis prepared pursuant to section 4(b)(2) of the Act and E.O. 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish & Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

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, the Service lacks the 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 reopen the public comment period for the proposed designation for an additional 60 days. 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.

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 Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* is not a significant regulatory action under Executive Order 12866, and 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.''

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 actions they fund, carry out, or permit do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

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 this rule will significantly or uniquely affect small governments. As such, a Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

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 and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Oregon and Washington. The designation of critical habitat in areas currently occupied by the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* 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 lands containing the features 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 proposed designating critical habitat in accordance with the provisions of the Endangered Species Act. This proposed 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 Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens*.

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

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. We have determined that there are no tribal lands essential for the conservation of the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens*. Therefore, critical habitat for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Oregon Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The primary author of this package is Mikki Collins, Oregon Fish and Wildlife Office, 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.

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 § 17.11(h), revise the entry for ''Butterfly, Fender's blue'' under ''INSECTS'' 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						
*	*	*	*		*		*
INSECTS							
*	*	*	*		*		*
Butterfly, Fender's blue.	*Icaricia icarioides fenderi.*	U.S.A. (OR)	NA	E	679	17.95(i)	NA
*	*	*	*		*		*

3. In § 17.12(h), revise the entry for *Erigeron decumbens* var. *decumbens* (Willamette daisy) and *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine) 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							
*	*	*	*		*		*
Erigeron decumbens var. *decumbens.*	Willamette daisy	U.S.A. (OR)	Asteraceae—Aster family.	E	679	17.96	NA
*	*	*	*		*		*
Lupinus sulphureus ssp. *kincaidii.*	Kincaid's lupine	U.S.A (OR, WA)	Fabaceae—Pea family.	T	679	17.96	NA
*	*	*	*		*		*

4. In § 17.95(i), add the entry for ''Fender's blue butterfly'' under ''INSECTS'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

* * * * *

Fender's Blue Butterfly (*Icaricia icarioides fenderi*)

(1) Critical habitat units are depicted for Benton, Lane, Polk, and Yamhill Counties, Oregon, on the maps below.

(2) The primary constituent elements of critical habitat for the Fender's blue butterfly are the habitat components that provide:

(i) Early seral upland prairie, oak savanna habitat with undisturbed subsoils that provides a mosaic of low growing grasses and forbs, and an absence of dense canopy vegetation allowing access to sunlight needed to seek nectar and search for mates;

(ii) Larval host-plants: *Lupinus sulphureus* ssp. *kincaidii, L. arbustus,* or *L. albicaulis;*

(iii) Adult nectar sources, such as: *Allium acuminatum* (tapertip onion), *Allium amplectens* (narrowleaf onion), *Calochortus tolmiei* (Tolmie's mariposa lilly), *Camassia quamash* (small camas), *Cryptantha intermedia* (clearwater cryptantha), *Eriophyllum lanatum* (wooly sunflower), *Geranium oreganum* (Oregon geranium), *Iris tenax* (toughleaf iris), *Linum angustifolium* (pale flax), *Linum perenne* (blue flax), *Sidalcea campestris* (Meadow checkermallow), *Sidalcea virgata* (rose checker-mallow), *Vicia cracca* (bird vetch), *V. sativa* (common vetch) and *V. hirsute* (tiny vetch);

(iv) Stepping stone habitat: undeveloped open areas with the physical characteristics appropriate for supporting the short-stature prairie, oak/savanna plant community (well drained soils), within and between natal lupine patches (~1.2 miles (~2 km)), necessary for dispersal, connectivity, population growth, and, ultimately, viability.

(3) Critical habitat does not include humanmade structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(4) Critical habitat units are described below. Data layers defining map units were created using USGS 2000 Digital Ortho Quads 24,000 in projection Universal Transverse Mercator (UTM) zone 10, North American Datum (NAD) 27.

(5) **Note:** Map 1 (Index map for Fender's blue butterfly) follows:

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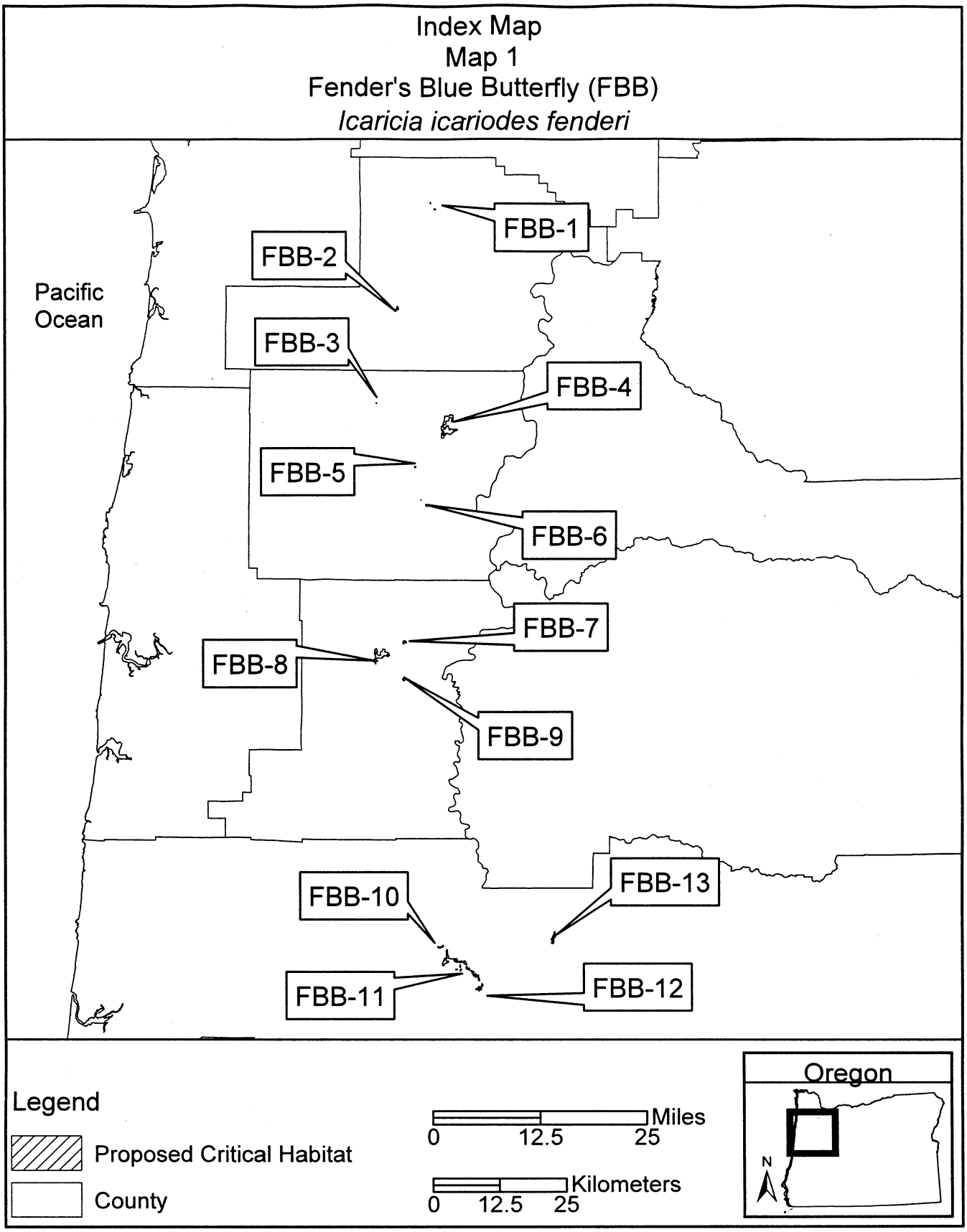
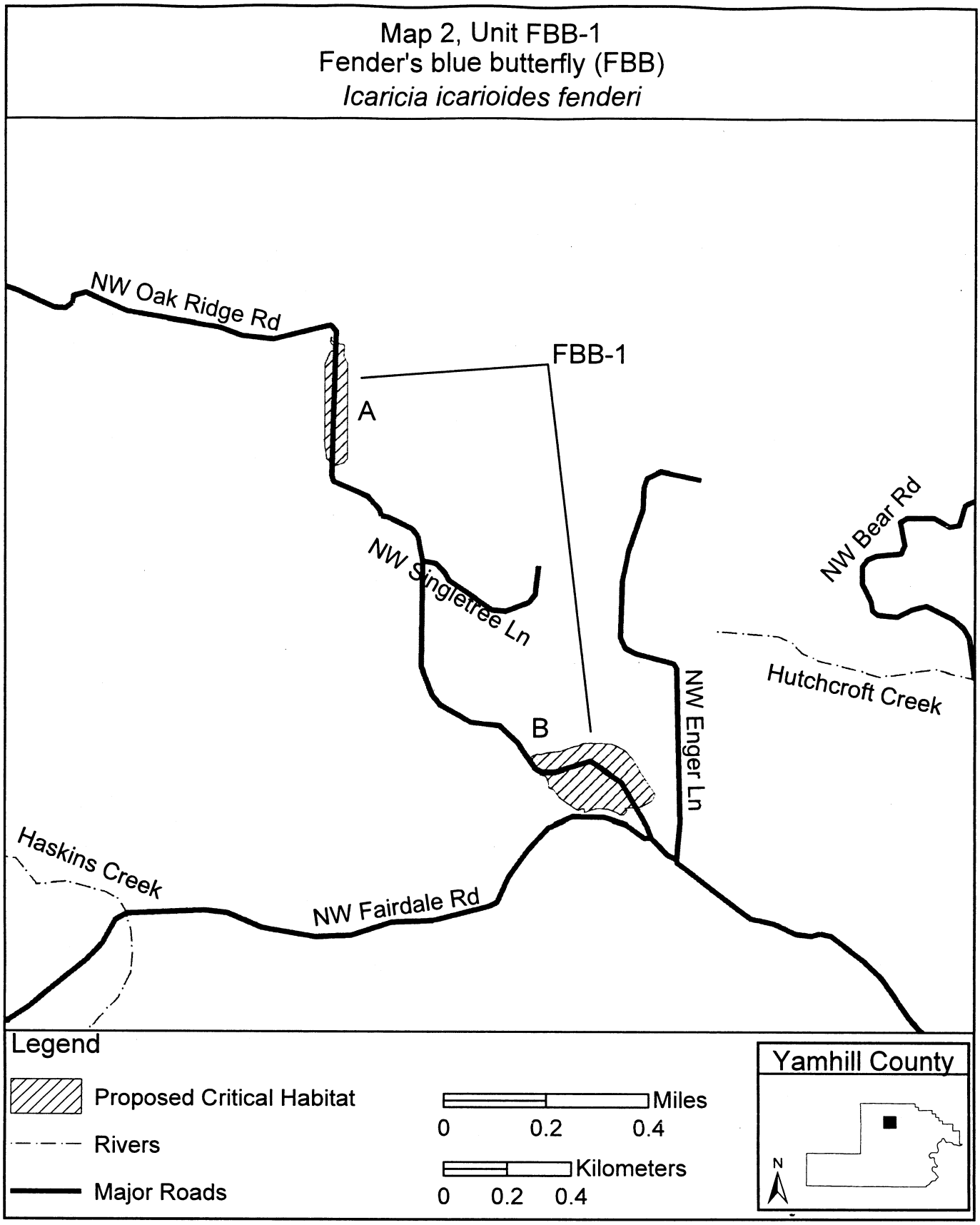

Index Map
Map 1
Fender's Blue Butterfly (FBB)
Icaricia icariodes fenderi
Pacific Ocean
FBB-1
FBB-2
FBB-3
FBB-4
FBB-5
FBB-6
FBB-7
FBB-8
FBB-9
FBB-10
FBB-11
FBB-12
FBB-13
Legend
Proposed Critical Habitat
County
Miles
0 12.5 25
Kilometers
0 12.5 25
Oregon
N

(6) Unit 1 for Fender's blue butterfly (FBB–1), Yamhill County, Oregon.

(i) Unit 1A (FBB–1A): 477039, 5022576; 477038, 5022585; 477039, 5022591; 477039, 5022824; 477055, 5022862; 477073, 5022873; 477056, 5022893; 477056, 5022901; 477057, 5022907; 477061, 5022907; 477060, 5022896; 477081, 5022888; 477101, 5022884; 477099, 5022848; 477110, 5022829; 477111, 5022528; 477098, 5022513; 477069, 5022504; 477067, 5022498; 477069, 5022493; 477070, 5022487; 477067, 5022487; 477065, 5022493; 477063, 5022498; 477063, 5022510; 477046, 5022526; 477039, 5022566; 477039, 5022576.

(ii) Unit 1B (FBB–1B): 477695, 5021589; 477690, 5021600; 477691, 5021601; 477707, 5021609; 477719, 5021607; 477739, 5021612; 477777, 5021616; 477823, 5021631; 477839, 5021635; 477849, 5021641; 477867, 5021641; 477876, 5021643; 477881, 5021641; 477902, 5021642; 477941, 5021640; 477957, 5021634; 477983, 5021620; 478008, 5021592; 478031, 5021554; 478078, 5021484; 478068, 5021464; 478035, 5021445; 477996, 5021442; 477983, 5021440; 477989, 5021435; 477986, 5021427; 477979, 5021419; 477968, 5021420; 477956, 5021427; 477931, 5021437; 477898, 5021440; 477878, 5021434; 477854, 5021427; 477857, 5021435; 477855, 5021439; 477846, 5021438; 477836, 5021433; 477812, 5021449; 477790, 5021465; 477773, 5021478; 477759, 5021499; 477745, 5021504; 477743, 5021519; 477744, 5021519; 477737, 5021537; 477732, 5021541; 477731, 5021541; 477731, 5021541; 477731, 5021541; 477731, 5021541; 477730, 5021541; 477730, 5021541; 477729, 5021541; 477727, 5021541; 477727, 5021541; 477727, 5021541; 477727, 5021541; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477725, 5021543; 477724, 5021543; 477724, 5021543; 477724, 5021543; 477724, 5021543; 477723, 5021543; 477723, 5021543; 477723, 5021543; 477722, 5021543; 477722, 5021544; 477721, 5021544; 477720, 5021543; 477720, 5021543; 477720, 5021543; 477720, 5021543; 477720, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477718, 5021543; 477718, 5021543; 477718, 5021543; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021545; 477718, 5021545; 477718, 5021545; 477718, 5021545; 477718, 5021545; 477718, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477720, 5021545; 477720, 5021545; 477720, 5021545; 477721, 5021546; 477721, 5021546; 477721, 5021546; 477721, 5021546; 477721, 5021546; 477721, 5021546; 477722, 5021546; 477722, 5021546; 477722, 5021546; 477722, 5021546; 477723, 5021545; 477723, 5021545; 477723, 5021545; 477723, 5021545; 477723, 5021545; 477724, 5021545; 477725, 5021544; 477725, 5021544; 477725, 5021544; 477725, 5021544; 477726, 5021544; 477726, 5021544; 477726, 5021544; 477726, 5021544; 477726, 5021544; 477726, 5021544; 477727, 5021543; 477728, 5021543; 477729, 5021543; 477715, 5021554; 477698, 5021582; 477695, 5021586; 477695, 5021589.

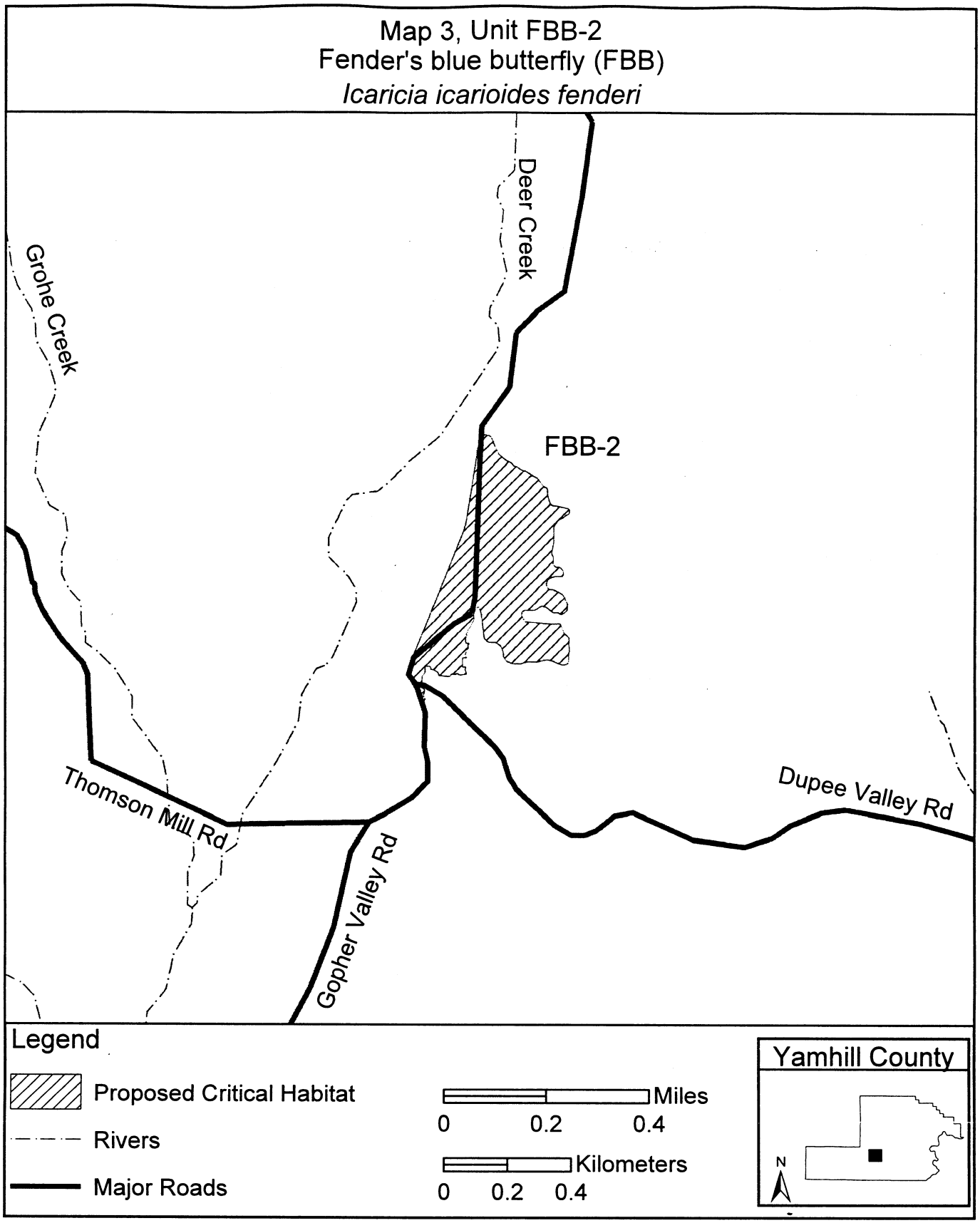
(iii) **Note:** Map 2 of Unit 1 for Fender's blue butterfly (FBB–1) follows:


Map 2, Unit FBB-1
Fender's blue butterfly (FBB)
Icaricia icarioides fenderi
NW Oak Ridge Rd
FBB-1
A
NW Singletree Ln
NW Bear Rd
Hutchcroft Creek
NW Enger Ln
B
Haskins Creek
NW Fairdale Rd
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.2 0.4
Kilometers
0 0.2 0.4
Yamhill County
N

(7) Unit 2 for Fender's blue butterfly (FBB–2), Yamhill County, Oregon.

(i) Unit 2 (FBB–2): 470725, 5003387; 470725, 5003399; 470728, 5003400; 470728, 5003406; 470733, 5003407; 470738, 5003441; 470741, 5003444; 470749, 5003447; 470755, 5003446; 470764, 5003444; 470769, 5003441; 470775, 5003430; 470778, 5003422; 470780, 5003416; 470782, 5003411; 470787, 5003400; 470790, 5003393; 470794, 5003387; 470797, 5003383; 470810, 5003372; 470817, 5003367; 470829, 5003362; 470836, 5003356; 470841, 5003352; 470852, 5003349; 470856, 5003345; 470858, 5003343; 470869, 5003337; 470878, 5003335; 470891, 5003328; 470895, 5003325; 470901, 5003320; 470914, 5003313; 470925, 5003301; 470930, 5003295; 470937, 5003286; 470945, 5003282; 470948, 5003277; 470948, 5003271; 470948, 5003260; 470951, 5003247; 470955, 5003235; 470959, 5003231; 470965, 5003226; 470972, 5003226; 470984, 5003224; 470992, 5003223; 471004, 5003220; 471012, 5003218; 471016, 5003215; 471018, 5003209; 471014, 5003202; 471011, 5003200; 471006, 5003198; 470998, 5003191; 470991, 5003187; 470988, 5003186; 470981, 5003180; 470977, 5003176; 470973, 5003168; 470970, 5003165; 470968, 5003159; 470968, 5003151; 470968, 5003132; 470968, 5003123; 470967, 5003109; 470965, 5003099; 470962, 5003090; 470961, 5003075; 470965, 5003070; 470966, 5003065; 470967, 5003055; 470965, 5003048; 470969, 5003041; 470974, 5003036; 470979, 5003036; 470984, 5003035; 470986, 5003035; 470990, 5003032; 470995, 5003027; 470998, 5003022; 470998, 5003015; 470998, 5003010; 470994, 5003007; 470988, 5003006; 470977, 5003006; 470973, 5003006; 470963, 5003004; 470957, 5003001; 470949, 5002996; 470947, 5002994; 470945, 5002987; 470944, 5002981; 470946, 5002976; 470949, 5002967; 470958, 5002964; 470965, 5002964; 470973, 5002962; 470981, 5002958; 470988, 5002955; 470994, 5002951; 470999, 5002946; 471004, 5002937; 471005, 5002932; 471010, 5002924; 471012, 5002918; 471010, 5002913; 471011, 5002902; 471003, 5002893; 470992, 5002886; 470982, 5002892; 470966, 5002893; 470956, 5002901; 470945, 5002909; 470932, 5002914; 470925, 5002911; 470914, 5002904; 470905, 5002901; 470893, 5002900; 470876, 5002901; 470868, 5002895; 470867, 5002887; 470879, 5002867; 470888, 5002866; 470935, 5002861; 470970, 5002859; 470988, 5002861; 470991, 5002853; 470998, 5002837; 471002, 5002828; 471012, 5002821; 471016, 5002816; 471015, 5002796; 471017, 5002785; 471017, 5002776; 471016, 5002766; 471015, 5002751; 471014, 5002740; 471012, 5002737; 471008, 5002734; 470998, 5002731; 470988, 5002734; 470981, 5002737; 470975, 5002739; 470967, 5002744; 470959, 5002745; 470951, 5002747; 470943, 5002747; 470929, 5002745; 470924, 5002744; 470917, 5002740; 470908, 5002741; 470894, 5002743; 470884, 5002741; 470878, 5002739; 470871, 5002737; 470865, 5002735; 470861, 5002735; 470853, 5002735; 470843, 5002736; 470834, 5002737; 470826, 5002742; 470819, 5002745; 470814, 5002751; 470811, 5002758; 470811, 5002764; 470809, 5002774; 470805, 5002784; 470801, 5002791; 470797, 5002795; 470787, 5002802; 470780, 5002802; 470772, 5002802; 470760, 5002805; 470752, 5002811; 470750, 5002818; 470747, 5002830; 470746, 5002840; 470744, 5002861; 470743, 5002874; 470740, 5002886; 470738, 5002896; 470735, 5002904; 470731, 5002910; 470729, 5002911; 470716, 5002892; 470717, 5002872; 470704, 5002848; 470692, 5002827; 470696, 5002824; 470691, 5002816; 470690, 5002804; 470692, 5002800; 470703, 5002799; 470698, 5002794; 470700, 5002783; 470695, 5002776; 470691, 5002769; 470690, 5002762; 470695, 5002753; 470682, 5002753; 470682, 5002723; 470692, 5002723; 470689, 5002717; 470691, 5002709; 470694, 5002702; 470684, 5002700; 470675, 5002699; 470665, 5002704; 470657, 5002701; 470651, 5002704; 470645, 5002701; 470640, 5002694; 470623, 5002696; 470617, 5002697; 470608, 5002697; 470604, 5002707; 470589, 5002716; 470582, 5002715; 470580, 5002725; 470564, 5002726; 470563, 5002707; 470555, 5002695; 470553, 5002676; 470548, 5002670; 470553, 5002660; 470562, 5002655; 470562, 5002646; 470557, 5002635; 470564, 5002625; 470557, 5002608; 470514, 5002689; 470514, 5002732; 470561, 5002844; 470604, 5002950; 470685, 5003149; 470688, 5003164; 470693, 5003185; 470725, 5003387.

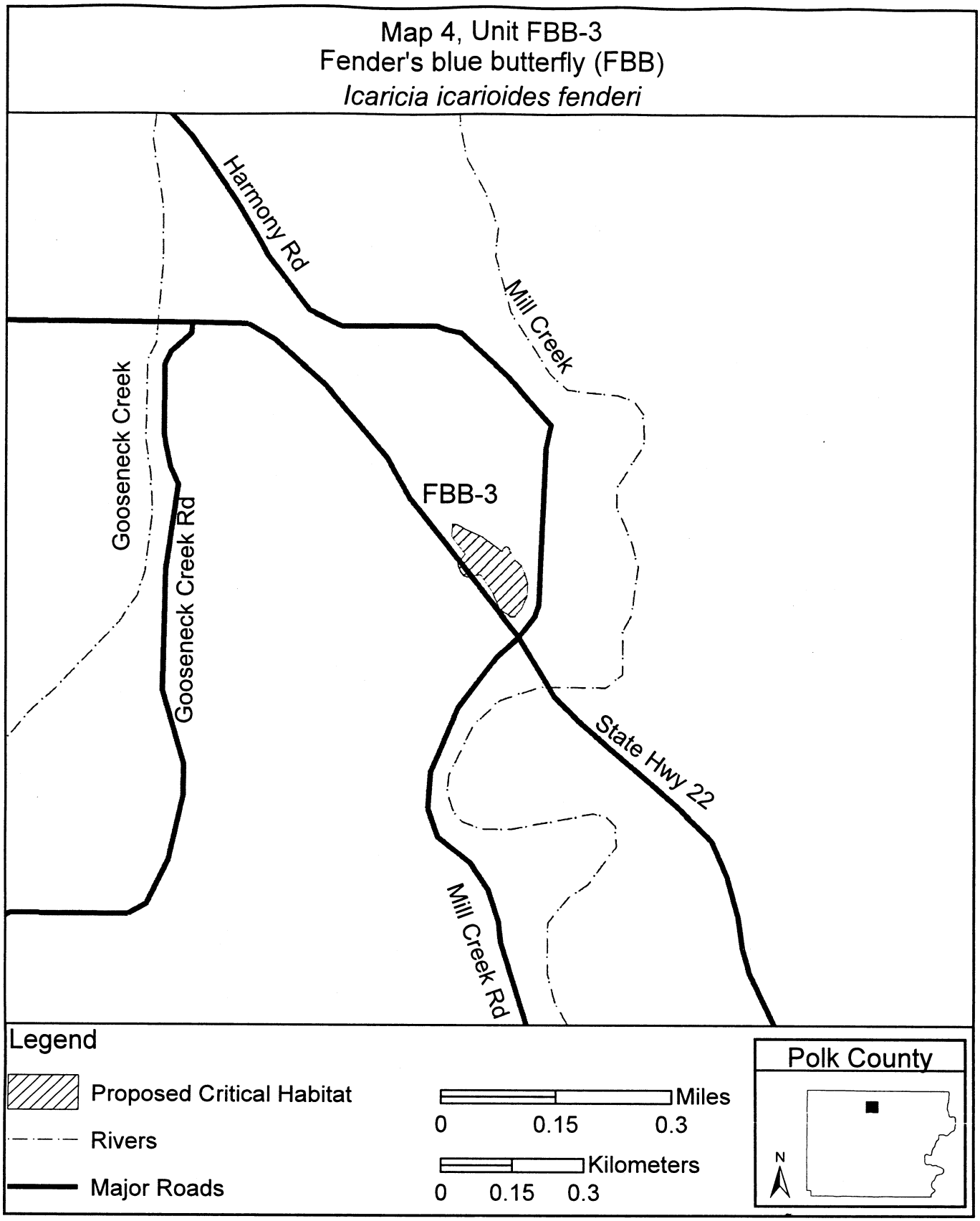
(ii) **Note:** Map 3 of Unit 2 for Fender's blue butterfly (FBB–2) follows:


Map 3, Unit FBB-2
Fender's blue butterfly (FBB)
Icaricia icarioides fenderi
Deer Creek
Grohe Creek
FBB-2
Thomson Mill Rd
Gopher Valley Rd
Dupee Valley Rd
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.2 0.4
Kilometers
0 0.2 0.4
Yamhill County
N

(8) Unit 3 for Fender's blue butterfly (FBB–3), Polk County, Oregon.

(i) Unit 3 (FBB–3): 466683, 4985320; 466691, 4985320; 466712, 4985309; 466744, 4985295; 466788, 4985264; 466788, 4985266; 466788, 4985267; 466788, 4985268; 466789, 4985269; 466789, 4985270; 466790, 4985271; 466791, 4985272; 466792, 4985273; 466793, 4985273; 466795, 4985273; 466796, 4985274; 466797, 4985273; 466798, 4985273; 466800, 4985272; 466800, 4985272; 466801, 4985271; 466802, 4985270; 466802, 4985269; 466803, 4985267; 466803, 4985266; 466803, 4985265; 466802, 4985264; 466805, 4985263; 466814, 4985246; 466828, 4985234; 466834, 4985222; 466841, 4985196; 466839, 4985170; 466828, 4985145; 466814, 4985129; 466805, 4985129; 466783, 4985143; 466767, 4985178; 466742, 4985216; 466725, 4985214; 466725, 4985212; 466721, 4985211; 466718, 4985210; 466715, 4985211; 466711, 4985212; 466707, 4985213; 466700, 4985220; 466694, 4985237; 466694, 4985239; 466694, 4985241; 466696, 4985243; 466710, 4985258; 466681, 4985295; 466683, 4985320.

(ii) **Note:** Map 4 of Unit 3 for Fender's blue butterfly (FBB–3) follows:


Map 4, Unit FBB-3
Fender's blue butterfly (FBB)
Icaricia icarioides fenderi
Harmony Rd
Mill Creek
Gooseneck Creek
Gooseneck Creek Rd
FBB-3
State Hwy 22
Mill Creek Rd
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0
0.15
0.3
Kilometers
0
0.15
0.3
Polk County
N

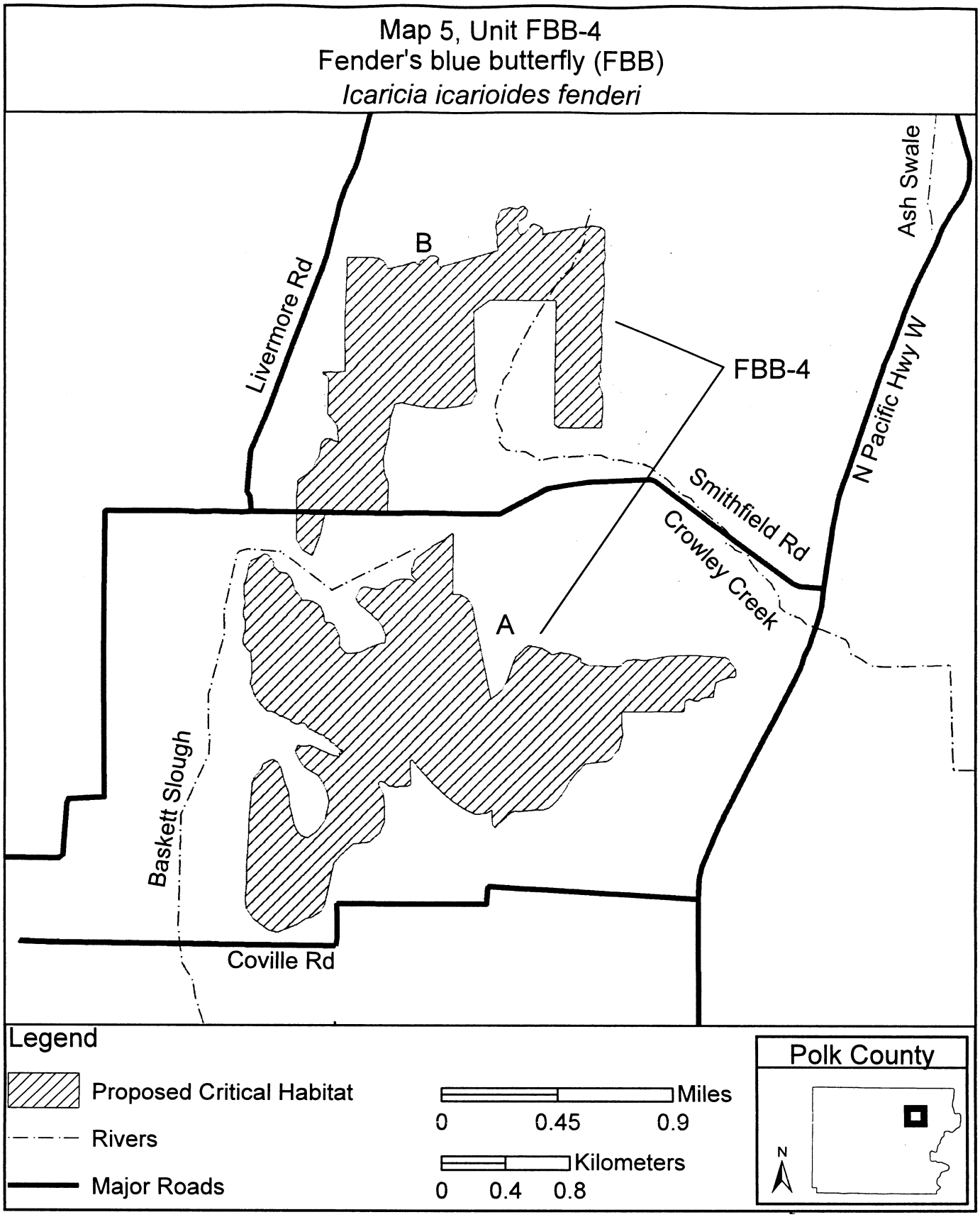
(9) Unit 4 for Fender's blue butterfly (FBB–4), Polk County, Oregon.

(i) Unit 4A (FBB–4A): 479115, 4978766; 479123, 4978846; 479124, 4978910; 479125, 4978980; 479136, 4979163; 479138, 4979243; 479160, 4979487; 479170, 4979514; 479211, 4979570; 479216, 4979575; 479226, 4979608; 479267, 4979631; 479289, 4979636; 479317, 4979621; 479337, 4979585; 479357, 4979503; 479386, 4979425; 479394, 4979339; 479420, 4979229; 479437, 4979189; 479463, 4979159; 479505, 4979144; 479558, 4979182; 479590, 4979220; 479615, 4979263; 479634, 4979344; 479637, 4979377; 479627, 4979430; 479599, 4979493; 479567, 4979539; 479517, 4979565; 479479, 4979591; 479448, 4979641; 479427, 4979687; 479442, 4979726; 479483, 4979721; 479523, 4979726; 479636, 4979673; 479674, 4979658; 479689, 4979658; 479704, 4979652; 479706, 4979658; 479702, 4979671; 479704, 4979680; 479709, 4979687; 479718, 4979687; 479726, 4979685; 479732, 4979688; 479725, 4979696; 479712, 4979698; 479700, 4979702; 479694, 4979712; 479677, 4979727; 479671, 4979737; 479657, 4979744; 479647, 4979749; 479641, 4979754; 479640, 4979762; 479629, 4979768; 479616, 4979772; 479610, 4979778; 479603, 4979787; 479591, 4979790; 479582, 4979793; 479572, 4979797; 479564, 4979803; 479556, 4979804; 479545, 4979812; 479530, 4979818; 479523, 4979826; 479513, 4979823; 479506, 4979832; 479500, 4979842; 479497, 4979852; 479487, 4979861; 479471, 4979865; 479459, 4979860; 479446, 4979857; 479431, 4979857; 479415, 4979864; 479402, 4979872; 479393, 4979882; 479357, 4979902; 479332, 4979906; 479304, 4979923; 479280, 4979933; 479251, 4979937; 479208, 4979982; 479184, 4980014; 479170, 4980039; 479157, 4980082; 479148, 4980099; 479149, 4980126; 479158, 4980154; 479155, 4980237; 479150, 4980299; 479129, 4980320; 479108, 4980347; 479100, 4980373; 479105, 4980406; 479115, 4980442; 479118, 4980493; 479105, 4980533; 479106, 4980564; 479115, 4980602; 479110, 4980644; 479110, 4980683; 479110, 4980720; 479124, 4980755; 479131, 4980796; 479136, 4980835; 479149, 4980865; 479167, 4980878; 479187, 4980883; 479210, 4980892; 479224, 4980903; 479235, 4980911; 479248, 4980909; 479266, 4980896; 479279, 4980880; 479288, 4980866; 479294, 4980851; 479290, 4980840; 479292, 4980832; 479303, 4980821; 479314, 4980812; 479321, 4980800; 479342, 4980795; 479356, 4980790; 479364, 4980792; 479374, 4980790; 479382, 4980780; 479392, 4980770; 479402, 4980759; 479407, 4980742; 479414, 4980719; 479422, 4980693; 479430, 4980679; 479449, 4980659; 479473, 4980619; 479509, 4980619; 479536, 4980613; 479568, 4980594; 479588, 4980578; 479596, 4980556; 479604, 4980531; 479607, 4980512; 479609, 4980497; 479619, 4980487; 479636, 4980487; 479648, 4980486; 479659, 4980480; 479671, 4980469; 479704, 4980398; 479706, 4980386; 479702, 4980362; 479704, 4980343; 479711, 4980330; 479727, 4980313; 479740, 4980301; 479758, 4980294; 479785, 4980295; 479836, 4980302; 479893, 4980332; 479923, 4980343; 479952, 4980354; 479966, 4980359; 479982, 4980358; 479990, 4980366; 479994, 4980387; 479992, 4980413; 479983, 4980435; 479974, 4980464; 479942, 4980502; 479908, 4980532; 479883, 4980552; 479854, 4980578; 479835, 4980590; 479820, 4980608; 479808, 4980638; 479818, 4980663; 479831, 4980688; 479856, 4980704; 479881, 4980702; 479905, 4980696; 479927, 4980689; 479954, 4980688; 479989, 4980698; 480013, 4980714; 480029, 4980729; 480046, 4980739; 480067, 4980747; 480091, 4980753; 480117, 4980754; 480138, 4980754; 480156, 4980749; 480173, 4980738; 480181, 4980739; 480188, 4980746; 480170, 4980766; 480158, 4980778; 480158, 4980793; 480158, 4980810; 480160, 4980824; 480168, 4980835; 480169, 4980847; 480173, 4980863; 480179, 4980878; 480197, 4980892; 480221, 4980911; 480245, 4980928; 480273, 4980947; 480296, 4980966; 480330, 4980984; 480356, 4981000; 480386, 4981021; 480405, 4981037; 480420, 4981038; 480415, 4980660; 480465, 4980658; 480509, 4980632; 480539, 4980585; 480559, 4980485; 480655, 4980012; 480670, 4980021; 480700, 4980045; 480721, 4980066; 480736, 4980087; 480757, 4980126; 480772, 4980165; 480790, 4980221; 480805, 4980257; 480811, 4980275; 480850, 4980311; 480865, 4980329; 480892, 4980347; 480943, 4980338; 480973, 4980332; 480997, 4980317; 481021, 4980302; 481036, 4980287; 481093, 4980302; 481105, 4980299; 481150, 4980293; 481188, 4980278; 481215, 4980266; 481218, 4980239; 481272, 4980218; 481290, 4980218; 481335, 4980218; 481371, 4980215; 481401, 4980212; 481446, 4980212; 481473, 4980221; 481482, 4980236; 481506, 4980254; 481542, 4980257; 481584, 4980257; 481617, 4980251; 481719, 4980272; 481776, 4980281; 481926, 4980287; 482124, 4980275; 482147, 4980262; 482161, 4980236; 482177, 4980217; 482190, 4980197; 482191, 4980181; 482193, 4980161; 482184, 4980150; 482154, 4980150; 482109, 4980135; 482067, 4980117; 482058, 4980075; 482052, 4980027; 481998, 4980024; 481977, 4980018; 481959, 4980003; 481938, 4980003; 481920, 4980009; 481899, 4980015; 481875, 4980003; 481866, 4979937; 481473, 4979934; 481476, 4979898; 481476, 4979835; 481482, 4979793; 481470, 4979754; 481464, 4979730; 481455, 4979703; 481434, 4979682; 481413, 4979649; 481380, 4979628; 481338, 4979625; 481293, 4979619; 481248, 4979613; 481233, 4979601; 481215, 4979577; 481194, 4979562; 481150, 4979505; 481120, 4979448; 481099, 4979418; 481069, 4979382; 481039, 4979352; 481018, 4979334; 480985, 4979322; 480928, 4979319; 480868, 4979313; 480835, 4979310; 480805, 4979313; 480781, 4979304; 480739, 4979268; 480703, 4979235; 480679, 4979211; 480667, 4979229; 480664, 4979265; 480664, 4979320; 480631, 4979301; 480562, 4979290; 480500, 4979319; 480430, 4979365; 480364, 4979418; 480295, 4979482; 480192, 4979594; 480162, 4979636; 480146, 4979629; 480153, 4979478; 480132, 4979469; 480081, 4979470; 480069, 4979463; 480014, 4979470; 479987, 4979491; 479974, 4979497; 479955, 4979499; 479950, 4979491; 479949, 4979474; 479980, 4979422; 479985, 4979353; 479986, 4979247; 479955, 4979176; 479892, 4979121; 479789, 4979108; 479733, 4979057; 479709, 4979033; 479669, 4978987; 479621, 4978771; 479610, 4978730; 479588, 4978684; 479536, 4978649; 479490, 4978639; 479442, 4978604; 479317, 4978553; 479262, 4978567; 479166, 4978639; 479121, 4978705; 479115, 4978766.

(ii) Unit 4B (FBB–4B): 479435, 4980999; 479436, 4981283; 479442, 4981328; 479442, 4981367; 479454, 4981382; 479475, 4981394; 479505, 4981415; 479535, 4981445; 479562, 4981499; 479574, 4981517; 479583, 4981556; 479589, 4981601; 479607, 4981622; 479619, 4981628; 479634, 4981631; 479649, 4981628; 479667, 4981619; 479688, 4981616; 479697, 4981604; 479697, 4981631; 479691, 4981661; 479694, 4981691; 479688, 4981712; 479652, 4981763; 479628, 4981787; 479631, 4981825; 479634, 4982011; 479625, 4982026; 479601, 4982038; 479598, 4982050; 479613, 4982050; 479652, 4982053; 479682, 4982047; 479739, 4982056; 479736, 4982344; 479748, 4982644; 479751, 4982674; 479751, 4982713; 479748, 4982746; 479754, 4982764; 479913, 4982761; 479931, 4982758; 479949, 4982758; 479964, 4982746; 479979,

4982740; 479988, 4982722; 480006, 4982689; 480015, 4982689; 480033, 4982692; 480072, 4982704; 480108, 4982710; 480129, 4982719; 480141, 4982722; 480159, 4982728; 480168, 4982728; 480179, 4982728; 480188, 4982716; 480197, 4982719; 480209, 4982737; 480218, 4982743; 480242, 4982746; 480254, 4982758; 480269, 4982770; 480287, 4982773; 480299, 4982773; 480314, 4982767; 480323, 4982758; 480320, 4982740; 480317, 4982722; 480329, 4982704; 480341, 4982698; 480350, 4982707; 480365, 4982710; 480698, 4982806; 480695, 4982821; 480692, 4982836; 480689, 4982860; 480692, 4982887; 480689, 4982908; 480686, 4982929; 480683, 4982950; 480686, 4982986; 480695, 4983006; 480704, 4983036; 480716, 4983054; 480731, 4983060; 480752, 4983063; 480770, 4983072; 480806, 4983063; 480815, 4983063; 480830, 4983069; 480842, 4983078; 480860, 4983078; 480881, 4983054; 480869, 4983018; 480854, 4983006; 480830, 4982992; 480818, 4982974; 480821, 4982950; 480821, 4982944; 480821, 4982923; 480836, 4982905; 480845, 4982908; 480860, 4982911; 480872, 4982923; 480884, 4982938; 480896, 4982953; 480902, 4982965; 480917, 4982974; 480962, 4982956; 480968, 4982950; 480977, 4982947; 480977, 4982932; 480974, 4982905; 480992, 4982911; 481046, 4982920; 481070, 4982926; 481106, 4982932; 481157, 4982941; 481178, 4982941; 481184, 4982944; 481196, 4982950; 481205, 4982950; 481220, 4982950; 481229, 4982950; 481244, 4982956; 481253, 4982953; 481280, 4982962; 481337, 4982953; 481364, 4982932; 481364, 4982914; 481361, 4982848; 481361, 4982812; 481367, 4982770; 481355, 4982716; 481361, 4982623; 481358, 4982518; 481340, 4982314; 481349, 4982287; 481346, 4982218; 481343, 4982125; 481337, 4982089; 481343, 4982062; 481337, 4982050; 481328, 4982047; 481334, 4982023; 481337, 4982002; 481328, 4981984; 481331, 4981969; 481337, 4981954; 481349, 4981930; 481352, 4981888; 481355, 4981867; 481355, 4981828; 481346, 4981742; 481349, 4981724; 481343, 4981703; 481075, 4981699; 481048, 4981722; 481059, 4982492; 480646, 4982496; 480545, 4982422; 480553, 4982004; 480564, 4981927; 480530, 4981858; 480456, 4981838; 480352, 4981823; 480247, 4981830; 480158, 4981846; 480089, 4981861; 480050, 4981850; 480023, 4981761; 480011, 4981656; 479988, 4981567; 479977, 4981509; 479984, 4981417; 480010, 4981359; 480004, 4981154; 479663, 4981161; 479609, 4981154; 479582, 4981030; 479532, 4980899; 479526, 4980905; 479499, 4980920; 479487, 4980926; 479472, 4980935; 479435, 4980999.

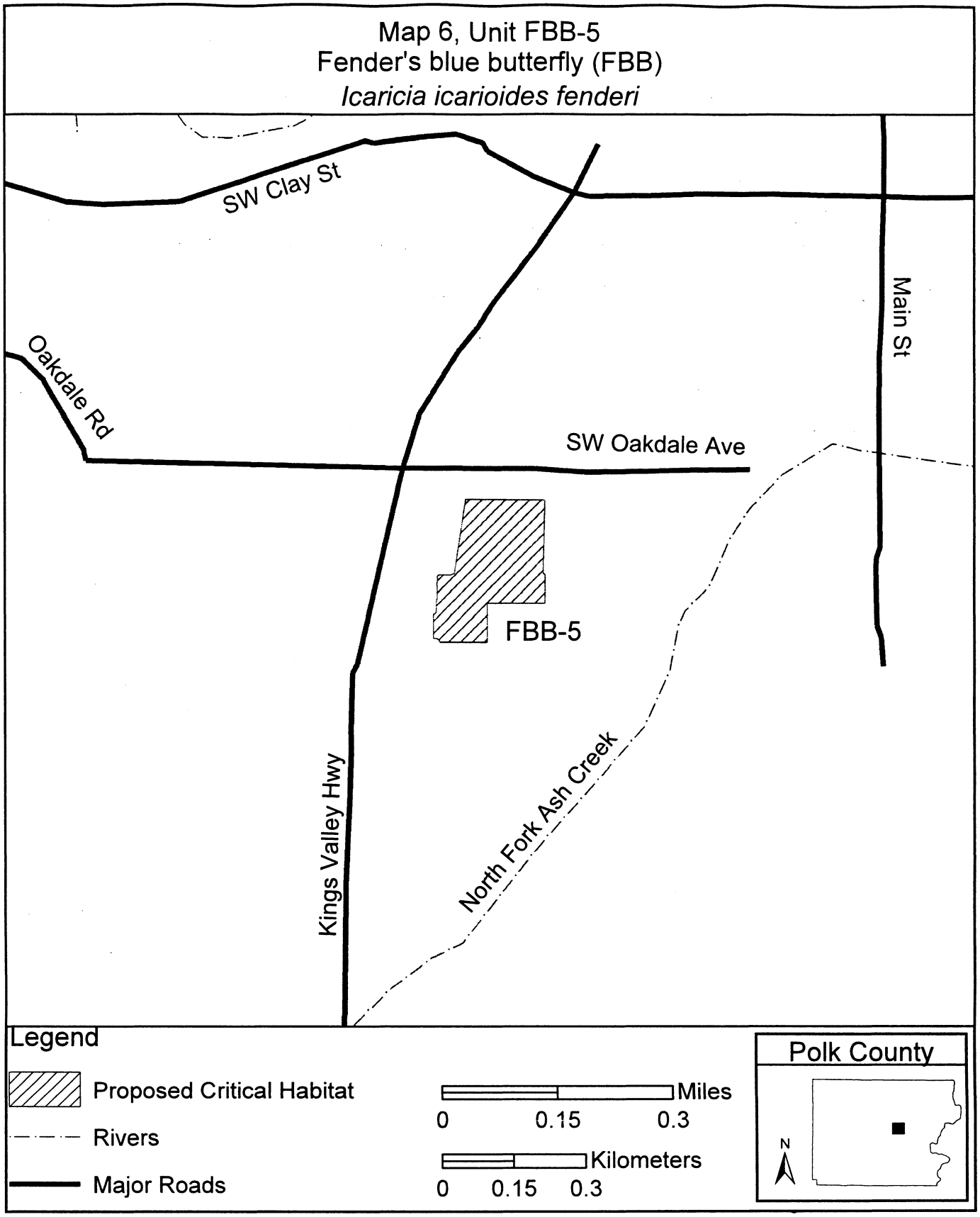
(iii) **Note:** Map 5 of Unit 4 for Fender's blue butterfly (FBB–4) follows:


Map 5, Unit FBB-4
Fender's blue butterfly (FBB)
Icaricia icarioides fenderi
Ash Swale
B
Livermore Rd
FBB-4
N Pacific Hwy W
Smithfield Rd
Crowley Creek
A
Baskett Slough
Coville Rd
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.45 0.9
Kilometers
0 0.4 0.8
Polk County
N

(10) Unit 5 for Fender's blue butterfly (FBB–5), Polk County, Oregon.

(i) Unit 5 (FBB–5): 474107, 4973322; 474272, 4973321; 474269, 4973168; 474273, 4973168; 474274, 4973107; 474153, 4973107; 474153, 4973026; 474053, 4973026; 474051, 4973029; 474049, 4973032; 474047, 4973034; 474042, 4973034; 474039, 4973035; 474038, 4973084; 474044, 4973086; 474045, 4973092; 474045, 4973097; 474045, 4973104; 474045, 4973109; 474046, 4973116; 474047, 4973121; 474046, 4973128; 474047, 4973134; 474047, 4973139; 474046, 4973146; 474047, 4973152; 474048, 4973154; 474047, 4973158; 474048, 4973164; 474049, 4973164; 474052, 4973165; 474054, 4973165; 474061, 4973165; 474067, 4973165; 474074, 4973165; 474079, 4973166; 474083, 4973168; 474098, 4973263; 474107, 4973322.

(ii) **Note:** Map 6 of Unit 5 for Fender's blue butterfly (FBB–5) follows:

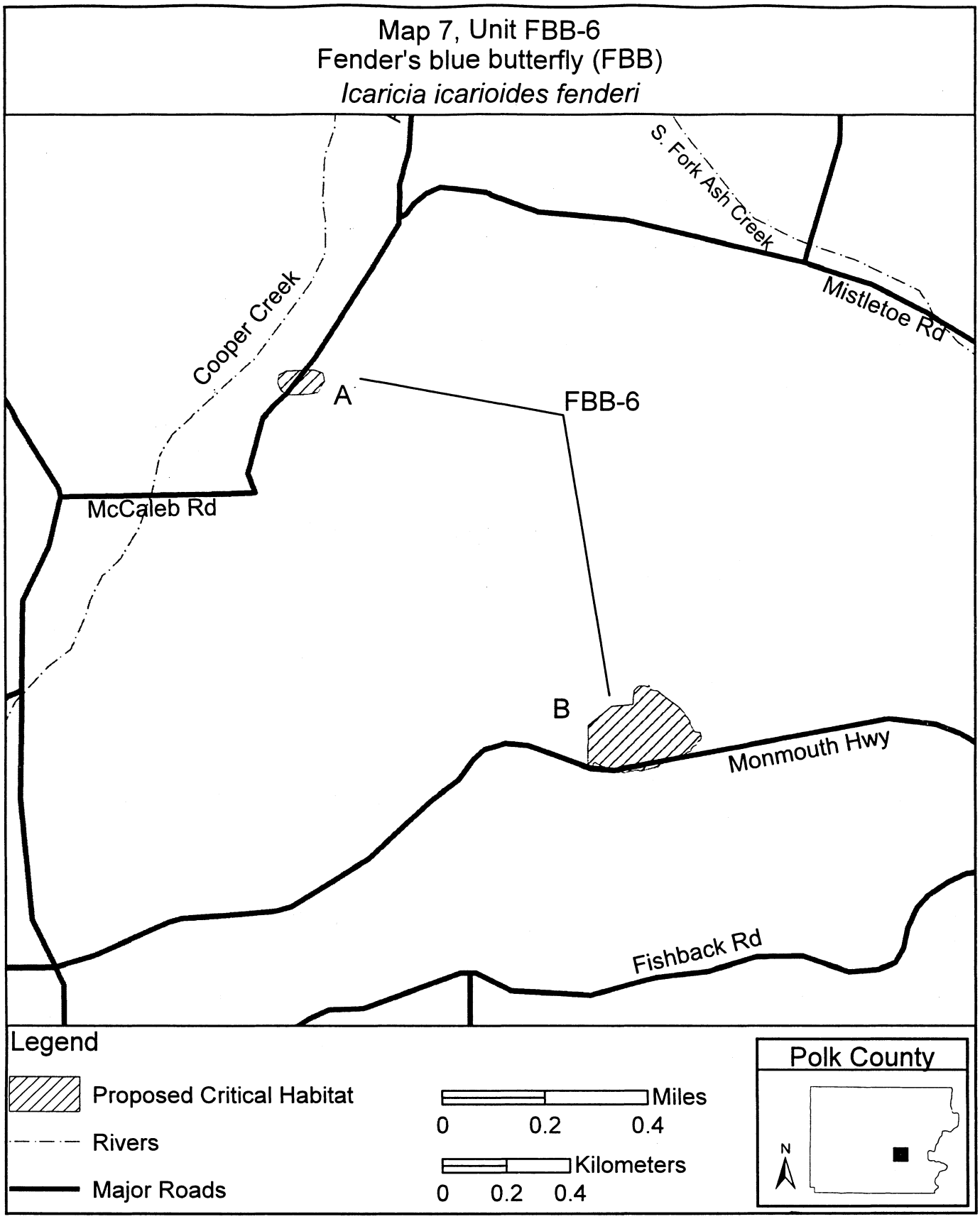

Map 6, Unit FBB-5
Fender's blue butterfly (FBB)
Icaricia icarioides fenderi
SW Clay St
Main St
Oakdale Rd
SW Oakdale Ave
FBB-5
Kings Valley Hwy
North Fork Ash Creek
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.15 0.3
Kilometers
0 0.15 0.3
Polk County
N

(11) Unit 6 for Fender's blue butterfly (FBB–6), Polk County, Oregon.

(i) Unit 6A (FBB–6A): 475213, 4966910; 475218, 4966935; 475240, 4966947; 475327, 4966950; 475355, 4966941; 475361, 4966915; 475341, 4966880; 475311, 4966874; 475279, 4966872; 475243, 4966871; 475222, 4966886; 475213, 4966910.

(ii) Unit 6B (FBB–6B): 476186, 4965722; 476188, 4965840; 476262, 4965902; 476327, 4965906; 476329, 965931; 476331, 4965951; 476344, 4965964; 476364, 4965964; 476376, 4965961; 476378, 4965968; 476384, 4965952; 476405, 4965950; 476419, 4965937; 476444, 965919; 476463, 4965906; 476473, 4965897; 476487, 4965882; 476493, 4965872; 476506, 4965856; 476509, 4965842; 476521, 4965821; 476538, 4965819; 476542, 965808; 476540, 4965796; 476532, 4965791; 476525, 4965780; 476519, 4965777; 476512, 4965770; 476507, 4965760; 476499, 4965757; 476493, 4965753; 476484, 965744; 476477, 4965750; 476466, 4965743.

(iii) **Note:** Map 7 of Unit 6 for Fender's blue butterfly (FBB–6) follows:


Map 7, Unit FBB-6
Fender's blue butterfly (FBB)
Icaricia icarioides fenderi
S. Fork Ash Creek
Mistletoe Rd
Cooper Creek
A
FBB-6
McCaleb Rd
B
Monmouth Hwy
Fishback Rd
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.2 0.4
Kilometers
0 0.2 0.4
Polk County
N

(12) Units 7, 8, and 9 for Fender's blue butterfly (FBB–7, FBB–8, and FBB–9), Benton County, Oregon.

(i) Unit 7 (FBB–7): 471794, 4940353; 471803, 4940362; 471803, 4940364; 471807, 4940366; 471867, 4940431; 471952, 4940515; 471990, 4940567; 471991, 4940575; 472013, 4940637; 472052, 4940649; 472060, 4940661; 472124, 4940639; 472167, 4940615; 472226, 4940578; 472270, 4940565; 472318, 4940556; 472350, 4940543; 472373, 4940518; 472375, 4940513; 472419, 4940445; 472464, 4940349; 472490, 4940294; 472502, 4940201; 472490, 4940147; 472448, 4940135; 472366, 4940183; 472338, 4940288; 472332, 4940335; 472330, 4940336; 472301, 4940344; 472299, 4940360; 472299, 4940361; 472311, 4940365; 472327, 4940351; 472329, 4940349; 472327, 4940366; 472309, 4940399; 472291, 4940429; 472280, 4940441; 472273, 4940443; 472251, 4940425; 472164, 4940437; 472080, 4940413; 472057, 4940400; 472040, 4940379; 471998, 4940328; 471963, 4940293; 471939, 4940249; 471909, 4940193; 471945, 4940145; 471976, 4940150; 472017, 4940142; 472058, 4940114; 472066, 4940057; 472034, 4940006; 472007, 4939996; 471985, 4939977; 471922, 4939971; 471868, 4939977; 471860, 4939985; 471845, 4939987; 471821, 4940044; 471834, 4940085; 471856, 4940107; 471841, 4940161; 471831, 4940177; 471814, 4940212; 471809, 4940231; 471801, 4940263; 471801, 4940267; 471798, 4940271; 471796, 4940322; 471796, 4940326; 471794, 4940353.

(ii) Unit 8 (FBB–8): 466211, 4936799; 466299, 4937032; 466287, 4937049; 466323, 4937128; 466333, 4937175; 466358, 4937197; 466399, 4937195; 466435, 4937164; 466474, 4937164; 466507, 4937181; 466535, 4937200; 466526, 4937239; 466535, 4937294; 466551, 4937316; 466551, 4937355; 466565, 4937408; 466585, 4937561; 466593, 4937636; 466591, 4937693; 466593, 4937783; 466553, 4937832; 466482, 4937903; 466442, 4938088; 466427, 4938109; 466418, 4938183; 466379, 4938225; 466347, 4938249; 466370, 4938285; 466376, 4938324; 466382, 4938360; 466394, 4938393; 466415, 4938408; 466400, 4938467; 466513, 4938413; 466551, 4938272; 466720, 4938295; 466738, 4938502; 466423, 4938625; 466421, 4938685; 466400, 4938751; 466388, 4938802; 466367, 4938832; 466356, 4938868; 466359, 4938882; 466370, 4938900; 466400, 4938885; 466412, 4938891; 466427, 4938909; 466451, 4938906; 466463, 4938891; 466487, 4938891; 466514, 4938897; 466538, 4938918; 466526, 4938945; 466520, 4938981; 466529, 4939011; 466550, 4939035; 466586, 4939026; 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(iii) Unit 9 (FBB–9): 471730, 4933431; 471727, 4933437; 471725, 4933446; 471726, 4933455; 471727, 4933463; 471729, 4933470; 471732, 4933474; 471734, 4933481; 471736, 4933491; 471742, 4933498; 471743, 4933507; 471751, 4933521; 471752, 4933524; 471756, 4933529; 471757, 4933530; 471760, 4933534; 471762, 4933537; 471764, 4933539; 471767, 4933542; 471768, 4933544; 471770, 4933547;

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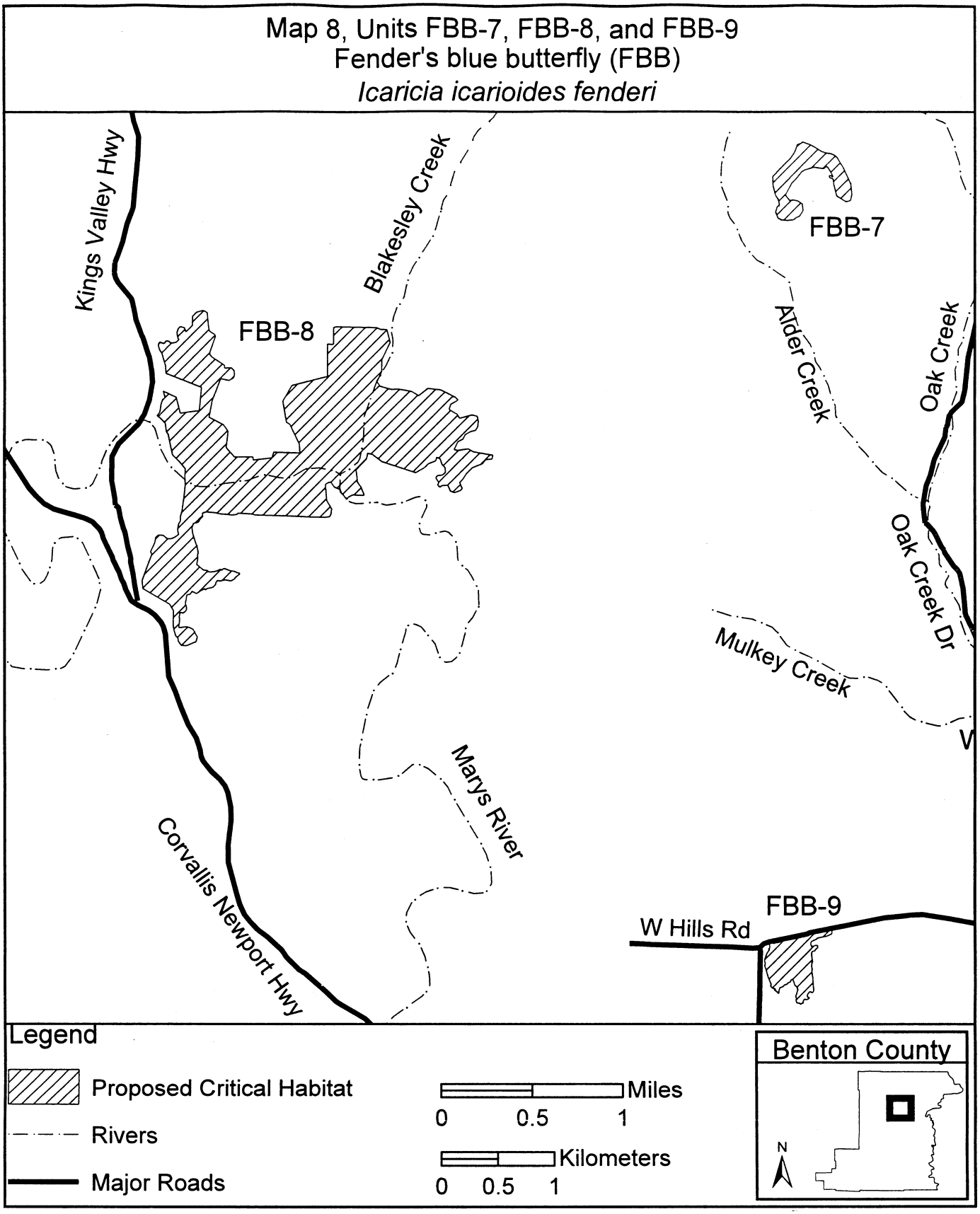
(iv) **Note:** Map 8 of Units 7, 8, and 9 for Fender's blue butterfly (FBB–7, FBB–8, and FBB–9) follows:


Map 8, Units FBB-7, FBB-8, and FBB-9
Fender's blue butterfly (FBB)
Icaricia icarioides fenderi
Kings Valley Hwy
Blakesley Creek
FBB-8
FBB-7
Alder Creek
Oak Creek
Oak Creek Dr
Mulkey Creek
Marys River
Corvallis Newport Hwy
FBB-9
W Hills Rd
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.5 1
Kilometers
0 0.5 1
Benton County
N

(13) Units 10, 11, and 12 for Fender's blue butterfly (FBB–10, FBB–11, and FBB–12) in Lane County, Oregon.

(i) Unit 10A (FBB10A): 478303, 4882985; 478321, 4883013; 478329, 4883031; 478335, 4883047; 478339, 4883067; 478349, 4883089; 478361, 4883104; 478367, 4883118; 478379, 4883126; 478391, 4883133; 478407, 4883134; 478415, 4883127; 478417, 4883114; 478420, 4883108; 478423, 4883095; 478428, 4883084; 478441, 4883074; 478459, 4883069; 478496, 4883065; 478510, 4883065; 478524, 4883065; 478536, 4883063; 478561, 4883057; 478583, 4883055; 478597, 4883053; 478619, 4883045; 478645, 4883029; 478659, 4883027; 478674, 4883027; 478676, 4883027; 478696, 4883033; 478706, 4883039; 478724, 4883031; 478728, 4883021; 478730, 4883011; 478746, 4883005; 478766, 4883009; 478772, 4883015; 478790, 4883005; 478809, 4883015; 478815, 4883037; 478815, 4883053; 478813, 4883069; 478805, 4883097; 478815, 4883107; 478859, 4883108; 478901, 4883104; 478921, 4883108; 479004, 4883110; 479010, 4883102; 479212, 4883102; 479210, 4883128; 479212, 4883156; 479210, 4883190; 479210, 4883218; 479214, 4883247; 479210, 4883265; 479208, 4883283; 479216, 4883313; 479218, 4883337; 479238, 4883339; 479278, 4883339; 479319, 4883343; 479361, 4883343; 479389, 4883341; 479413, 4883341; 479442, 4883333; 479454, 4883325; 479444, 4883317; 479419, 4883305; 479409, 4883299; 479403, 4883279; 479397, 4883259; 479385, 4883239; 479377, 4883216; 479371, 4883204; 479373, 4883192; 479373, 4883176; 479375, 4883162; 479371, 4883148; 479361, 4883128; 479357, 4883120; 479353, 4883108; 479365, 4883104; 479370, 4883105; 479372, 4883103; 479372, 4883083; 479371, 4883075; 479369, 4883061; 479365, 4883041; 479361, 4883025; 479345, 4883003; 479331, 4883007; 479333, 4882993; 479321, 4882977; 479306, 4882968; 479282, 4882968; 479266, 4882970; 479246, 4882973; 479226, 4882971; 479218, 4882977; 479212, 4882991; 479210, 4883009; 479204, 4883015; 479186, 4883017; 479165, 4883013; 479149, 4883013; 479135, 4883013; 479123, 4883007; 479093, 4883009; 479059, 4883003; 479026, 4883001; 479010, 4882997; 479004, 4882995; 479006, 4882987; 479014, 4882981; 479010, 4882970; 478998, 4882966; 478962, 4882964; 478930, 4882968; 478926, 4882977; 478913, 4882973; 478897, 4882962; 478857, 4882952; 478837, 4882954; 478831, 4882962; 478819, 4882982; 478807, 4882981; 478794, 4882977; 478778, 4882977; 478764, 4882966; 478770, 4882954; 478792, 4882950; 478817, 4882940; 478831, 4882918; 478841, 4882904; 478851, 4882900; 478863, 4882900; 478881, 4882900; 478891, 4882876; 478891, 4882862; 478899, 4882844; 478901, 4882831; 478893, 4882823; 478881, 4882815; 478879, 4882813; 478873, 4882801; 478861, 4882797; 478853, 4882795; 478849, 4882783; 478847, 4882775; 478837, 4882765; 478813, 4882761; 478794, 4882759; 478774, 4882759; 478758, 4882759; 478744, 4882757; 478734, 4882759; 478720, 4882759; 478700, 4882761; 478682, 4882765; 478665, 4882765; 478641, 4882765; 478627, 4882775; 478609, 4882779; 478597, 4882793; 478587, 4882801; 478577, 4882815; 478561, 4882825; 478555, 4882839; 478551, 4882846; 478540, 4882852; 478530, 4882858; 478528, 4882866; 478538, 4882876; 478543, 4882886; 478545, 4882894; 478551, 4882904; 478563, 4882916; 478569, 4882922; 478577, 4882928; 478589, 4882936; 478605, 4882946; 478617, 4882956; 478623, 4882964; 478623, 4882973; 478627, 4882983; 478619, 4882997; 478595, 4883005; 478573, 4883007; 478555, 4883007; 478534, 4883009; 478508, 4883005; 478480, 4882999; 478454, 4882997; 478442, 4882989; 478428, 4882989; 478418, 4882997; 478411, 4882989; 478403, 4882979; 478397, 4882964; 478382, 4882940; 478366, 4882933; 478349, 4882940; 478333, 4882956; 478317, 4882944; 478295, 4882954; 478297, 4882970; 478303, 4882985.

(ii) Unit 10B (FBB–10 B): 480171, 4882524; 480172, 4882501; 480173, 4882467; 480173, 4882393; 480173, 4882308; 480170, 4882236; 480168, 4882165; 480176, 4882152; 480191, 4882150; 480226, 4882147; 480247, 4882138; 480243, 4882127; 480236, 4882109; 480232, 4882089; 480224, 4882064; 480207, 4882058; 480209, 4882042; 480209, 4882024; 480185, 4882016; 480170, 4882007; 480169, 4881966; 480191, 4881931; 480206, 4881898; 480213, 4881847; 480219, 4881787; 480246, 4881569; 480248, 4881544; 480247, 4881536; 480247, 4881524; 480239, 4881512; 480240, 4881489; 480243, 4881474; 480247, 4881442; 480243, 4881433; 480239, 4881415; 480224, 4881399; 480215, 4881399; 480210, 4881384; 480221, 4881370; 480230, 4881360; 480254, 4881347; 480271, 4881331; 480283, 4881333; 480297, 4881333; 480325, 4881335; 480338, 4881336; 480361, 4881332; 480375, 4881331; 480386, 4881325; 480394, 4881312; 480398, 4881279; 480398, 4881082; 480400, 4881032; 480399, 4881003; 480394, 4880995; 480394, 4880984; 480410, 4880967; 480439, 4880944; 480461, 4880929; 480489, 4880913; 480500, 4880903; 480527, 4880894; 480546, 4880890; 480562, 4880889; 480588, 4880880; 480603, 4880869; 480652, 4880869; 480756, 4880865; 480878, 4880853; 480964, 4880846; 481037, 4880838; 481046, 4880837; 481058, 4880836; 481079, 4880833; 481099, 4880831; 481126, 4880830; 481145, 4880828; 481175, 4880825; 481201, 4880823; 481221, 4880820; 481228, 4880818; 481237, 4880816; 481245, 4880815; 481254, 4880810; 481267, 4880807; 481281, 4880801; 481299, 4880790; 481312, 4880776; 481334, 4880754; 481342, 4880741; 481355, 4880722; 481362, 4880704; 481366, 4880687; 481373, 4880667; 481374, 4880634; 481375, 4880644; 481379, 4880651; 481386, 4880656; 481391, 4880657; 481398, 4880658; 481400, 4880674; 481438, 4880675; 481448, 4880687; 481456, 4880694; 481462, 4880700; 481469, 4880706; 481475, 4880713; 481480, 4880724; 481483, 4880733; 481484, 4880743; 481486, 4880751; 481488, 4880768; 481486, 4880771; 481479, 4880782; 481476, 4880791; 481474, 4880801; 481472, 4880812; 481472, 4880820; 481465, 4880823; 481460, 4880827; 481453, 4880837; 481452, 4880846; 481453, 4880856; 481458, 4880865; 481462, 4880872; 481468, 4880879; 481473, 4880886; 481479, 4880892; 481490, 4880899; 481499, 4880907; 481510, 4880912; 481515, 4880918; 481537, 4880926; 481545, 4880928; 481567, 4880927; 481580, 4880925; 481590, 4880922; 481597, 4880918; 481602, 4880914; 481612, 4880913; 481613, 4880879; 481614, 4880860; 481616, 4880820; 481611, 4880819; 481612, 4880817; 481619, 4880814; 481619, 4880803; 481621, 4880799; 481622, 4880793; 481624, 4880788; 481624, 4880786; 481816, 4880785; 481814, 4880923; 481900, 4880926; 481912, 4880916; 481942, 4880882; 481988, 4880820; 481991, 4880727; 481800, 4880618; 481741, 4880607; 481669, 4880604; 481667, 4880569; 481686, 4880525; 481718, 4880494; 481780, 4880511; 481849, 4880560; 481913, 4880614; 481964, 4880648; 482025, 4880685; 482062, 4880698; 482079, 4880687; 482089, 4880665; 482099, 4880579; 482082, 4880547; 481998, 4880506; 481925, 4880469; 481809, 4880408; 481760, 4880370; 481645, 4880354; 481620, 4880380; 481618, 4880513; 481599, 4880529; 481594, 4880529; 481588, 4880525; 481558, 4880525; 481552, 4880523; 481532, 4880524; 481525, 4880523; 481509,

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(iii) Unit 11A (FBB–11A): 482470, 4879358; 482492, 4879432; 482573, 4879516; 482592, 4879600; 482486, 4879609; 482475, 4879701; 482527, 4879700; 482613, 4879696; 482655, 4879694; 482634, 4879216; 482560, 4879196; 482528, 4879254; 482470, 4879358.

(iv) Unit 11B (FBB–11B): 481791, 4878918; 481901, 4878886; 482130, 4878873; 482101, 4878734; 481898, 4878780; 481827, 4878721; 481792, 4878680; 481750, 4878676; 481734, 4878689; 481740, 4878776; 481743, 4878847; 481771, 4878922; 481791, 4878918.

(v) Unit 11C (FBB–11C): 482595, 4878851; 482687, 4878901; 482911, 4878899; 482883, 4878825; 482792, 4878741; 482744, 4878644; 482654, 4878599; 482625, 4878583; 482637, 4878489; 482654, 4878466; 482492, 4878476; 482492, 4878521; 482544, 4878709; 482595, 4878851.

(vi) Unit 11D (FBB–11D): 483920, 4879021; 483949, 4879004; 483975, 4878976; 483992, 4878953; 484027, 4878883; 484073, 4878855; 484168, 4878820; 484287, 4878766; 484397, 4878720; 484451, 4878701; 484503, 4878680; 484573, 4878636; 484639, 4878590; 484856, 4878596; 484906, 4878565; 484909, 4878412; 485247, 4878417; 485269, 4878317; 485038, 4878264; 484819, 4878269; 484774, 4878240; 484789, 4878221; 484812, 4878191; 484835, 4878177; 484878, 4878152; 484903, 4878140; 484938, 4878104; 484981, 4878028; 484993, 4877966; 484998, 4877917; 485005, 4877890; 485003, 4877861; 485011, 4877820; 485017, 4877793; 485036, 4877734; 485070, 4877669; 485113, 4877629; 485146, 4877591; 485208, 4877553; 485247, 4877566; 485260, 4877580; 485263, 4878059; 485381, 4878067; 485486, 4878059; 485530, 4878059; 485578, 4878058; 485595, 4878021; 485594, 4877901; 485597, 4877851; 485598, 4877813; 485589, 4877780; 485587, 4877759; 485722, 4877750; 485814, 4877744; 485846, 4877736; 485852, 4877720; 485875, 4877699; 485922, 4877690; 485976, 4877692; 485977, 4877709; 485984, 4877784; 485989, 4877798; 486000, 4877815; 486038, 4877819; 486065, 4877816; 486084, 4877816; 486099, 4877812; 486110, 4877794; 486113, 4877754; 486111, 4877741; 486112, 4877740; 486112, 4877735; 486106, 4877708; 486067, 4877628; 486041, 4877605; 486036, 4877586; 486033, 4877528; 486263, 4877100; 486261, 4876700; 486057, 4876700; 485991, 4876758; 485978, 4876930; 485986, 4877216; 485981, 4877497; 485981, 4877647; 485973, 4877656; 485909, 4877663; 485863, 4877664; 485840, 4877675; 485835, 4877721; 485714, 4877723; 485605, 4877726; 485592, 4877705; 485589, 4877570; 485589, 4877512; 485616, 4877499; 485716, 4877494; 485714, 4877466; 485719, 4877374; 485716, 4877332; 485700, 4877320; 485605, 4877329; 485547, 4877340; 485479, 4877364; 485432, 4877390; 485340, 4877458; 485284, 4877499; 485225, 4877518; 485184, 4877536; 485147, 4877558; 485105, 4877594; 485047, 4877650; 485019, 4877680; 485012, 4877709; 484990, 4877821; 484984, 4877845; 484981, 4877861; 484960, 4877869; 484936, 4877878; 484916, 4877898; 484897, 4877925; 484890, 4877956; 484890, 4877986; 484893, 4878018; 484903, 4878058; 484911, 4878082; 484866, 4878131; 484811, 4878156; 484773, 4878180; 484749, 4878218; 484735, 4878256; 484736, 4878340; 484711, 4878440; 484690, 4878493; 484646, 4878531; 484592, 4878580; 484516, 4878629; 484419, 4878666; 484282, 4878724; 484096, 4878800; 484017, 4878833; 483914, 4878874; 483812, 4878917; 483725, 4878961; 483698, 4878999; 483674, 4879071; 483668, 4879377; 483703, 4879390; 483754, 4879404; 483789, 4879412; 483849, 4879401; 483906, 4879358; 483920, 4879301; 483923, 4879247; 483917, 4879166; 483911, 4879133; 483895, 4879125; 483841, 4879126; 483792, 4879136; 483800, 4879102; 483835, 4879061; 483920, 4879021.

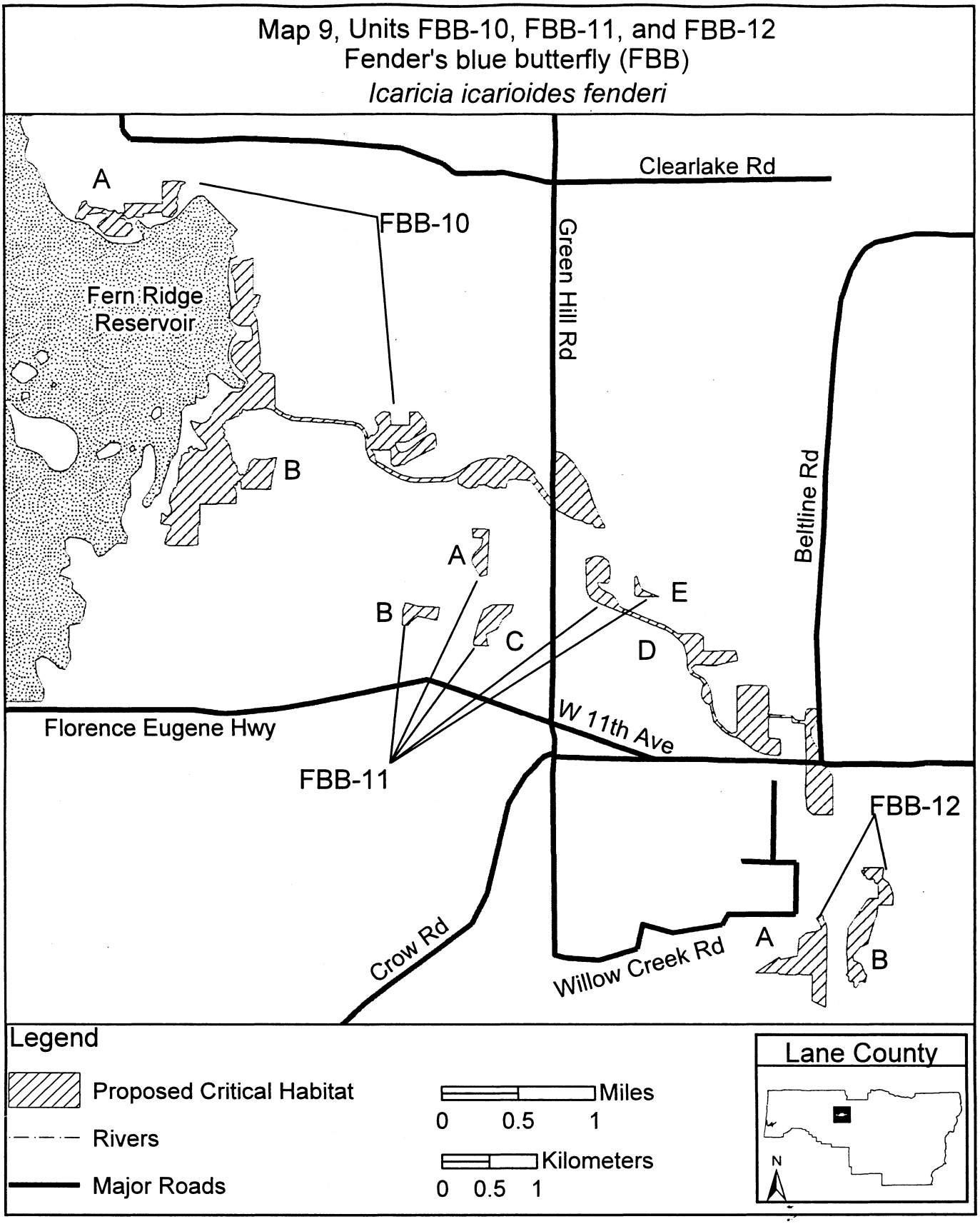
(vii) Unit 11E (FBB–11E): 484439, 4878986; 484226, 4878988; 484195, 4878996; 484183, 4879004; 484183, 4879189; 484193, 4879197; 484201, 4879199; 484220, 4879148; 484239, 4879099; 484253, 4879070; 484274, 4879053; 484439, 4878986.

(viii) Unit 12A (FBB–12A): 485712, 4875178; 485889, 4875218; 485910, 4875396; 485986, 4875456; 486062, 4875471; 486072, 4875472; 486086, 4875473; 486088, 4875478; 486096, 4875476; 486143, 4875502; 486141, 4875516; 486141, 4875526; 486138, 4875537; 486132, 4875540; 486115, 4875576; 486116, 4875585; 486113, 4875587; 486113, 4875591; 486100, 4875599; 486094, 4875607; 486092, 4875611; 486092, 4875616; 486105, 4875626; 486123, 4875643; 486143, 4875649; 486156, 4875646; 486159, 4875643; 486163, 4875634; 486164, 4875624; 486166, 4875609; 486169, 4875599; 486174, 4875586; 486190, 4875560; 486193, 4875549; 486195, 4875534; 486197, 4875513; 486200, 4875474; 486201, 4875316; 486185, 4874677; 486042, 4874749; 486046, 4875014; 485875, 4875023; 485874, 4875012; 485698, 4875023; 485695, 4875035; 485450, 4875035; 485702, 4875208; 485712, 4875178.

(ix) Unit 12B (FBB–12 B): 486401, 4875024; 486422, 4875028; 486417, 4875033; 486405, 4875292; 486421, 4875508; 486517, 4875652; 486614, 4875792; 486640, 4875821; 486742, 4875825; 486742, 4875951; 486725, 4875983; 486714, 4875983; 486709, 4875984; 486702, 4875993; 486694, 4876021; 486685, 4876033; 486684, 4876035; 486680, 4876031; 486676, 4876028; 486672, 4876025; 486660, 4876020; 486657, 4876018; 486652, 4876018; 486639, 4876025; 486629, 4876029; 486620, 4876034; 486614, 4876044; 486613, 4876052; 486610, 4876058; 486605, 4876068; 486594, 4876067; 486589, 4876066; 486585, 4876068; 486581, 4876078; 486576, 4876086; 486568, 4876093; 486565, 4876102; 486563, 4876110; 486565, 4876115; 486573, 4876118; 486577, 4876118; 486583, 4876115; 486588, 4876113; 486592, 4876119; 486590, 4876128; 486585, 4876137; 486580, 4876144; 486579, 4876147; 486795, 4876145; 486793, 4876121; 486790, 4876107; 486783, 4876064; 486783, 4876051; 486790, 4876034; 486805, 4876021; 486842, 4875993; 486855, 4875977; 486860, 4875962; 486869, 4875946; 486883, 4875908; 486893, 4875878; 486895, 4875857; 486896, 4875826; 486892, 4875791; 486893, 4875754; 486886, 4875756; 486738, 4875751; 486734, 4875744; 486731,

4875711; 486725, 4875665; 486720, 4875629; 486693, 4875573; 486629, 4875348; 486549, 4875312; 486469, 4875220; 486477, 4875168; 486553, 4875136; 486603, 4875021; 486608, 4875021; 486616, 4875020; 486601, 4874935; 486577, 4874945; 486546, 4874949; 486507, 4874882; 486482, 4874888; 486481, 4874944; 486439, 4874947; 486424, 4874957; 486426, 4874980; 486427, 4875000; 486409, 4875006; 486398, 4875018; 486401, 4875024.

(x) **Note:** Map 9 of Units 10, 11, and 12 for Fender's blue butterfly (FBB–10, FBB–11, and FBB–12) follows:

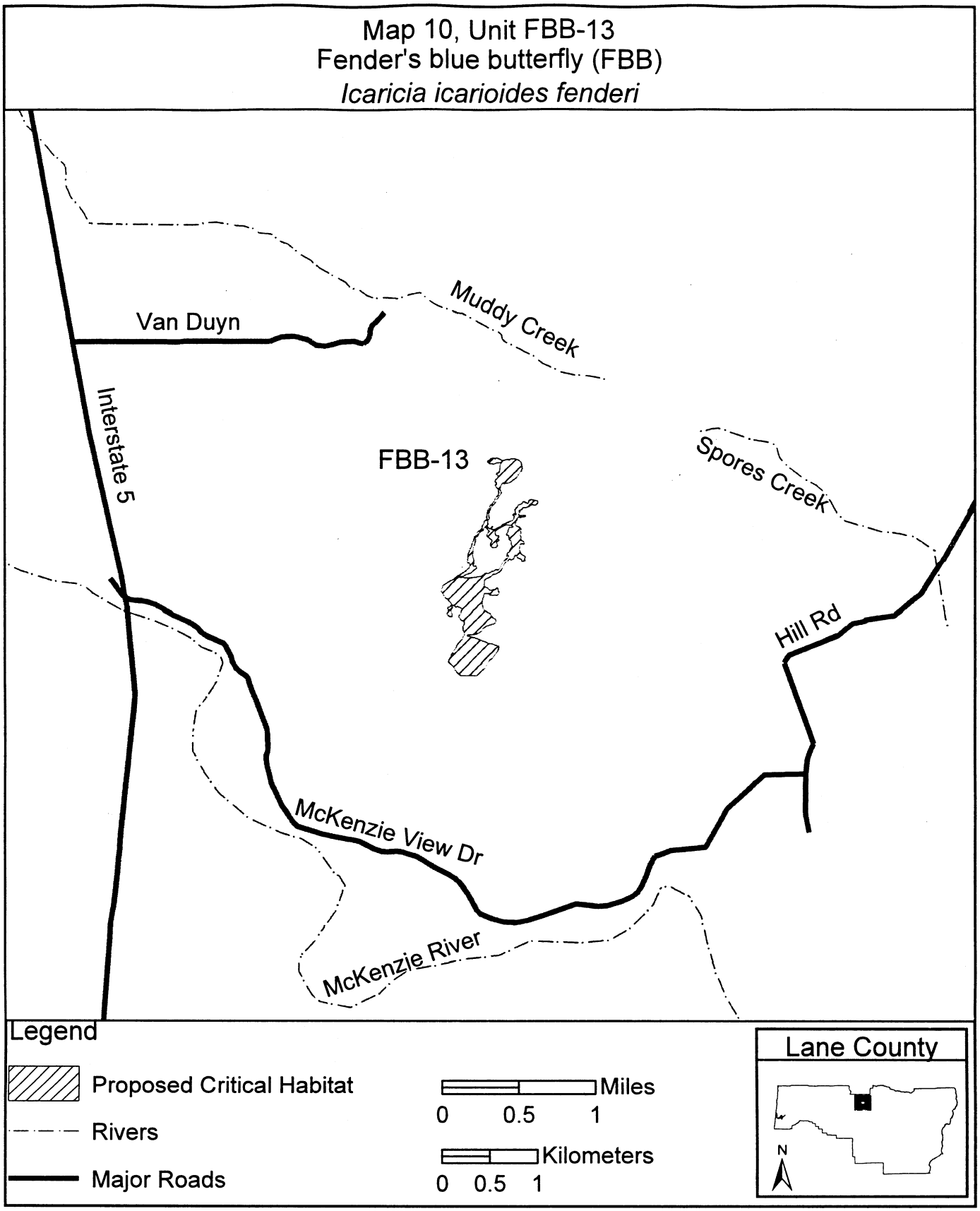

Map 9, Units FBB-10, FBB-11, and FBB-12
Fender's blue butterfly (FBB)
Icaricia icarioides fenderi
Clearlake Rd
Green Hill Rd
Beltline Rd
Fern Ridge Reservoir
FBB-10
A
B
A
B
C
D
E
Florence Eugene Hwy
W 11th Ave
FBB-11
FBB-12
A
B
Crow Rd
Willow Creek Rd
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.5 1
Kilometers
0 0.5 1
Lane County
N

(14) Unit 13 for Fender's blue butterfly, Lane County, Oregon.

(i) Unit 13 (FBB–13): 500326, 4885855; 500374, 4885871; 500388, 4885861; 500407, 4885873; 500445, 4885876; 500494, 4885861; 500516, 4885835; 500529, 4885775; 500516, 4885744; 500461, 4885670; 500397, 4885621; 500340, 4885608; 500322, 4885619; 500317, 4885610; 500306, 4885597; 500302, 4885585; 500297, 4885572; 500297, 4885553; 500301, 4885537; 500309, 4885525; 500306, 4885510; 500301, 4885500; 500291, 4885484; 500282, 4885466; 500266, 4885451; 500242, 4885409; 500227, 4885390; 500207, 4885373; 500198, 4885360; 500187, 4885333; 500176, 4885307; 500174, 4885290; 500176, 4885279; 500179, 4885270; 500184, 4885259; 500181, 4885253; 500171, 4885244; 500164, 4885234; 500162, 4885226; 500162, 4885217; 500163, 4885206; 500168, 4885202; 500171, 4885197; 500161, 4885192; 500160, 4885180; 500160, 4885169; 500164, 4885163; 500178, 4885155; 500184, 4885150; 500190, 4885148; 500193, 4885151; 500199, 4885162; 500206, 4885173; 500217, 4885177; 500212, 4885166; 500206, 4885154; 500201, 4885146; 500209, 4885142; 500215, 4885144; 500229, 4885144; 500239, 4885146; 500251, 4885152; 500259, 4885155; 500279, 4885163; 500292, 4885172; 500302, 4885178; 500314, 4885187; 500324, 4885196; 500329, 4885199; 500344, 4885203; 500352, 4885207; 500361, 4885212; 500371, 4885215; 500400, 4885229; 500421, 4885235; 500427, 4885243; 500433, 4885255; 500437, 4885268; 500442, 4885275; 500444, 4885282; 500438, 4885286; 500423, 4885294; 500426, 4885302; 500437, 4885307; 500442, 4885305; 500454, 4885296; 500462, 4885297; 500459, 4885311; 500452, 4885318; 500449, 4885334; 500453, 4885342; 500462, 4885352; 500467, 4885363; 500477, 4885365; 500477, 4885376; 500485, 4885383; 500494, 4885390; 500505, 4885393; 500521, 4885400; 500529, 4885408; 500534, 4885416; 500542, 4885422; 500554, 4885423; 500562, 4885416; 500568, 4885412; 500579, 4885407; 500592, 4885409; 500597, 4885417; 500596, 4885428; 500602, 4885436; 500609, 4885439; 500622, 4885444; 500634, 4885443; 500654, 4885440; 500673, 4885439; 500687, 4885436; 500694, 4885427; 500687, 4885407; 500670, 4885388; 500647, 4885390; 500636, 4885394; 500621, 4885391; 500602, 4885373; 500581, 4885365; 500549, 4885361; 500531, 4885360; 500527, 4885349; 500530, 4885339; 500519, 4885340; 500508, 4885335; 500504, 4885327; 500497, 4885330; 500491, 4885326; 500494, 4885317; 500489, 4885309; 500489, 4885296; 500502, 4885288; 500514, 4885289; 500537, 4885295; 500546, 4885294; 500558, 4885292; 500561, 4885282; 500554, 4885275; 500544, 4885277; 500529, 4885277; 500519, 4885272; 500513, 4885265; 500501, 4885271; 500485, 4885274; 500476, 4885264; 500468, 4885243; 500460, 4885232; 500457, 4885210; 500452, 4885199; 500457, 4885188; 500479, 4885175; 500486, 4885169; 500499, 4885169; 500506, 4885155; 500517, 4885152; 500513, 4885142; 500508, 4885129; 500512, 4885117; 500511, 4885095; 500505, 4885083; 500514, 4885068; 500512, 4885060; 500511, 4885048; 500513, 4885042; 500520, 4885030; 500524, 4885026; 500541, 4885018; 500541, 4885011; 500552, 4884997; 500547, 4884989; 500532, 4884994; 500523, 4884995; 500515, 4884995; 500507, 4884986; 500501, 4884974; 500500, 4884957; 500498, 4884940; 500500, 4884924; 500506, 4884903; 500512, 4884889; 500526, 4884882; 500538, 4884872; 500560, 4884867; 500558, 4884857; 500550, 4884838; 500557, 4884822; 500554, 4884812; 500539, 4884807; 500527, 4884801; 500520, 4884812; 500523, 4884822; 500519, 4884834; 500500, 4884839; 500486, 4884843; 500475, 4884849; 500469, 4884862; 500464, 4884870; 500455, 4884876; 500448, 4884874; 500444, 4884867; 500439, 4884851; 500437, 4884837; 500426, 4884837; 500418, 4884832; 500414, 4884825; 500401, 4884830; 500396, 4884836; 500386, 4884831; 500373, 4884819; 500362, 4884802; 500348, 4884785; 500337, 4884770; 500322, 4884744; 500312, 4884716; 500301, 4884704; 500292, 4884694; 500281, 4884687; 500267, 4884682; 500256, 4884673; 500244, 4884669; 500234, 4884672; 500222, 4884666; 500211, 4884655; 500201, 4884648; 500174, 4884630; 500154, 4884624; 500132, 4884606; 500134, 4884582; 500125, 4884539; 500130, 4884538; 500154, 4884536; 500166, 4884531; 500176, 4884521; 500182, 4884512; 500190, 4884506; 500198, 4884505; 500211, 4884508; 500219, 4884511; 500230, 4884513; 500238, 4884513; 500251, 4884513; 500256, 4884517; 500254, 4884528; 500261, 4884531; 500269, 4884528; 500279, 4884523; 500279, 4884506; 500281, 4884491; 500288, 4884489; 500287, 4884479; 500286, 4884472; 500276, 4884463; 500267, 4884455; 500258, 4884449; 500252, 4884457; 500236, 4884460; 500231, 4884449; 500220, 4884448; 500212, 4884454; 500193, 4884456; 500186, 4884460; 500187, 4884468; 500181, 4884474; 500149, 4884471; 500133, 4884476; 500124, 4884444; 500114, 4884406; 500109, 4884374; 500111, 4884347; 500121, 4884318; 500138, 4884294; 500164, 4884282; 500193, 4884273; 500201, 4884250; 500211, 4884236; 500229, 4884215; 500235, 4884217; 500245, 4884212; 500254, 4884199; 500251, 4884182; 500238, 4884164; 500224, 4884159; 500204, 4884154; 500174, 4884141; 500156, 4884137; 500145, 4884134; 500141, 4884126; 500130, 4884121; 500118, 4884114; 500115, 4884106; 500104, 4884084; 500095, 4884081; 500086, 4884071; 500050, 4884053; 499990, 4884044; 499956, 4884048; 499951, 4884036; 499966, 4884029; 499976, 4884029; 500008, 4884021; 500053, 4884012; 500169, 4883965; 500217, 4883954; 500256, 4883937; 500287, 4883928; 500276, 4883890; 500259, 4883868; 500219, 4883809; 500181, 4883777; 500171, 4883756; 500131, 4883708; 500125, 4883695; 500115, 4883689; 500063, 4883635; 500046, 4883627; 499885, 4883627; 499836, 4883667; 499804, 4883725; 499753, 4883765; 499771, 4883806; 499781, 4883829; 499786, 4883841; 499802, 4883859; 499837, 4883920; 499839, 4883934; 499868, 4883969; 499893, 4883998; 499921, 4884044; 499926, 4884058; 499908, 4884095; 499908, 4884114; 499907, 4884131; 499920, 4884154; 499926, 4884179; 499903, 4884192; 499878, 4884208; 499869, 4884224; 499867, 4884234; 499868, 4884250; 499875, 4884256; 499886, 4884279; 499896, 4884302; 499888, 4884318; 499844, 4884340; 499833, 4884325; 499826, 4884336; 499804, 4884347; 499803, 4884346; 499796, 4884334; 499799, 4884325; 499795, 4884317; 499787, 4884313; 499781, 4884298; 499783, 4884288; 499786, 4884282; 499792, 4884272; 499796, 4884254; 499796, 4884242; 499791, 4884232; 499779, 4884235; 499762, 4884241; 499749, 4884250; 499746, 4884260; 499746, 4884275; 499753, 4884282; 499756, 4884295; 499754, 4884304; 499747, 4884317; 499750, 4884327; 499755, 4884326; 499766, 4884329; 499774, 4884335; 499781, 4884335; 499784, 4884346; 499788, 4884351; 499793, 4884356; 499743, 4884415; 499723, 4884425; 499678, 4884501; 499702, 4884553; 499778, 4884603; 499794, 4884603; 499798, 4884609; 499815, 4884619; 499828, 4884630; 499840, 4884642; 499849, 4884652; 499868, 4884659; 499884, 4884670; 499903, 4884680; 499911, 4884685; 499923, 4884692; 499942, 4884707; 499951, 4884718; 499961, 4884726; 499969, 4884733; 499974, 4884745; 499979,

4884757; 499982, 4884774; 499978, 4884786; 499969, 4884789; 499953, 4884792; 499949, 4884805; 499953, 4884820; 499954, 4884835; 499957, 4884858; 499958, 4884880; 499965, 4884899; 499968, 4884907; 499974, 4884922; 499980, 4884936; 499987, 4884951; 499991, 4884964; 499996, 4884979; 500002, 4884995; 500008, 4885009; 500013, 4885025; 500020, 4885040; 500027, 4885063; 500032, 4885073; 500048, 4885105; 500059, 4885120; 500069, 4885128; 500084, 4885136; 500096, 4885144; 500100, 4885153; 500107, 4885166; 500108, 4885178; 500111, 4885195; 500122, 4885206; 500125, 4885217; 500130, 4885229; 500136, 4885234; 500145, 4885238; 500154, 4885244; 500157, 4885255; 500155, 4885263; 500152, 4885272; 500153, 4885285; 500157, 4885300; 500161, 4885324; 500171, 4885342; 500179, 4885357; 500185, 4885371; 500192, 4885383; 500206, 4885392; 500216, 4885409; 500230, 4885428; 500244, 4885450; 500259, 4885474; 500271, 4885484; 500282, 4885506; 500284, 4885519; 500280, 4885528; 500277, 4885551; 500274, 4885558; 500267, 4885564; 500260, 4885567; 500256, 4885574; 500251, 4885582; 500247, 4885589; 500247, 4885596; 500253, 4885598; 500258, 4885606; 500256, 4885616; 500254, 4885623; 500247, 4885628; 500239, 4885635; 500247, 4885640; 500250, 4885646; 500250, 4885653; 500254, 4885660; 500262, 4885664; 500273, 4885675; 500279, 4885683; 500277, 4885686; 500271, 4885694; 500267, 4885696; 500264, 4885706; 500260, 4885708; 500259, 4885716; 500261, 4885720; 500266, 4885721; 500275, 4885723; 500287, 4885728; 500298, 4885805; 500311, 4885825; 500303, 4885830; 500299, 4885833; 500292, 4885833; 500288, 4885831; 500284, 4885830; 500276, 4885833; 500271, 4885833; 500264, 4885830; 500259, 4885828; 500253, 4885827; 500247, 4885825; 500242, 4885820; 500239, 4885820; 500234, 4885816; 500229, 4885818; 500223, 4885814; 500220, 4885815; 500215, 4885819; 500211, 4885825; 500205, 4885821; 500200, 4885819; 500192, 4885818; 500185, 4885825; 500181, 4885830; 500171, 4885836; 500166, 4885843; 500164, 4885849; 500174, 4885853; 500177, 4885857; 500183, 4885861; 500187, 4885867; 500191, 4885870; 500199, 4885870; 500205, 4885874; 500205, 4885881; 500214, 4885879; 500219, 4885882; 500226, 4885882; 500232, 4885887; 500237, 4885879; 500247, 4885878; 500251, 4885881; 500259, 4885886; 500266, 4885881; 500274, 4885878; 500281, 4885875; 500294, 4885870; 500305, 4885867; 500309, 4885860; 500312, 4885856; 500326, 4885855; 499883, 4884641; 499869, 4884634; 499896, 4884633; 499920, 4884633; 499959, 4884630; 500010, 4884633; 500077, 4884643; 500098, 4884643; 500132, 4884671; 500152, 4884680; 500169, 4884677; 500211, 4884696; 500232, 4884707; 500254, 4884720; 500271, 4884714; 500280, 4884715; 500316, 4884780; 500328, 4884808; 500349, 4884827; 500374, 4884844; 500382, 4884855; 500387, 4884875; 500373, 4884873; 500367, 4884862; 500367, 4884883; 500374, 4884899; 500389, 4884907; 500401, 4884915; 500393, 4884922; 500399, 4884934; 500404, 4884947; 500414, 4884955; 500421, 4884967; 500414, 4884984; 500407, 4884992; 500412, 4885011; 500406, 4885026; 500392, 4885038; 500386, 4885045; 500381, 4885060; 500391, 4885076; 500386, 4885085; 500372, 4885080; 500364, 4885083; 500362, 4885099; 500372, 4885114; 500377, 4885133; 500385, 4885158; 500391, 4885166; 500404, 4885165; 500424, 4885161; 500427, 4885174; 500422, 4885182; 500387, 4885191; 500364, 4885192; 500348, 4885190; 500333, 4885182; 500317, 4885172; 500297, 4885161; 500275, 4885150; 500261, 4885142; 500246, 4885127; 500242, 4885106; 500246, 4885090; 500260, 4885076; 500272, 4885079; 500283, 4885078; 500283, 4885068; 500272, 4885060; 500268, 4885047; 500277, 4885039; 500286, 4885038; 500275, 4885024; 500260, 4885012; 500260, 4885001; 500265, 4884987; 500264, 4884970; 500252, 4884959; 500242, 4884954; 500226, 4884951; 500208, 4884958; 500198, 4884965; 500191, 4884981; 500194, 4884996; 500202, 4885011; 500212, 4885020; 500209, 4885034; 500193, 4885043; 500186, 4885049; 500179, 4885057; 500161, 4885069; 500154, 4885086; 500166, 4885113; 500182, 4885123; 500171, 4885137; 500162, 4885147; 500149, 4885157; 500137, 4885168; 500128, 4885163; 500119, 4885147; 500121, 4885136; 500101, 4885127; 500085, 4885118; 500077, 4885110; 500070, 4885099; 500062, 4885087; 500055, 4885072; 500041, 4885045; 500034, 4885017; 500029, 4884996; 500025, 4884978; 500016, 4884959; 500011, 4884937; 500011, 4884921; 500004, 4884891; 500006, 4884875; 500006, 4884860; 500014, 4884840; 500020, 4884823; 500025, 4884806; 500021, 4884789; 500024, 4884780; 500014, 4884772; 500014, 4884757; 500024, 4884754; 500039, 4884757; 500047, 4884762; 500047, 4884748; 500048, 4884731; 500033, 4884719; 500019, 4884709; 500009, 4884696; 499994, 4884686; 499975, 4884679; 499963, 4884672; 499939, 4884665; 499927, 4884656; 499908, 4884648; 499899, 4884644; 499883, 4884641.

(ii) **Note:** Map 10 for Unit 13 for Fender's blue butterfly (FBB–13) follows:


Map 10, Unit FBB-13
Fender's blue butterfly (FBB)
Icaricia icarioides fenderi
Van Duyn
Muddy Creek
Interstate 5
FBB-13
Spores Creek
Hill Rd
McKenzie View Dr
McKenzie River
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.5 1
Kilometers
0 0.5 1
Lane County
N

5. In § 17.96(a), add entries for *Erigeron decumbens* var. *decumbens* (Willamette daisy) and *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine) in alphabetical order by family under Asteraceae and Fabaceae, respectively, to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Asteraceae: *Erigeron decumbens* var. *decumbens* (Willamette Daisy)

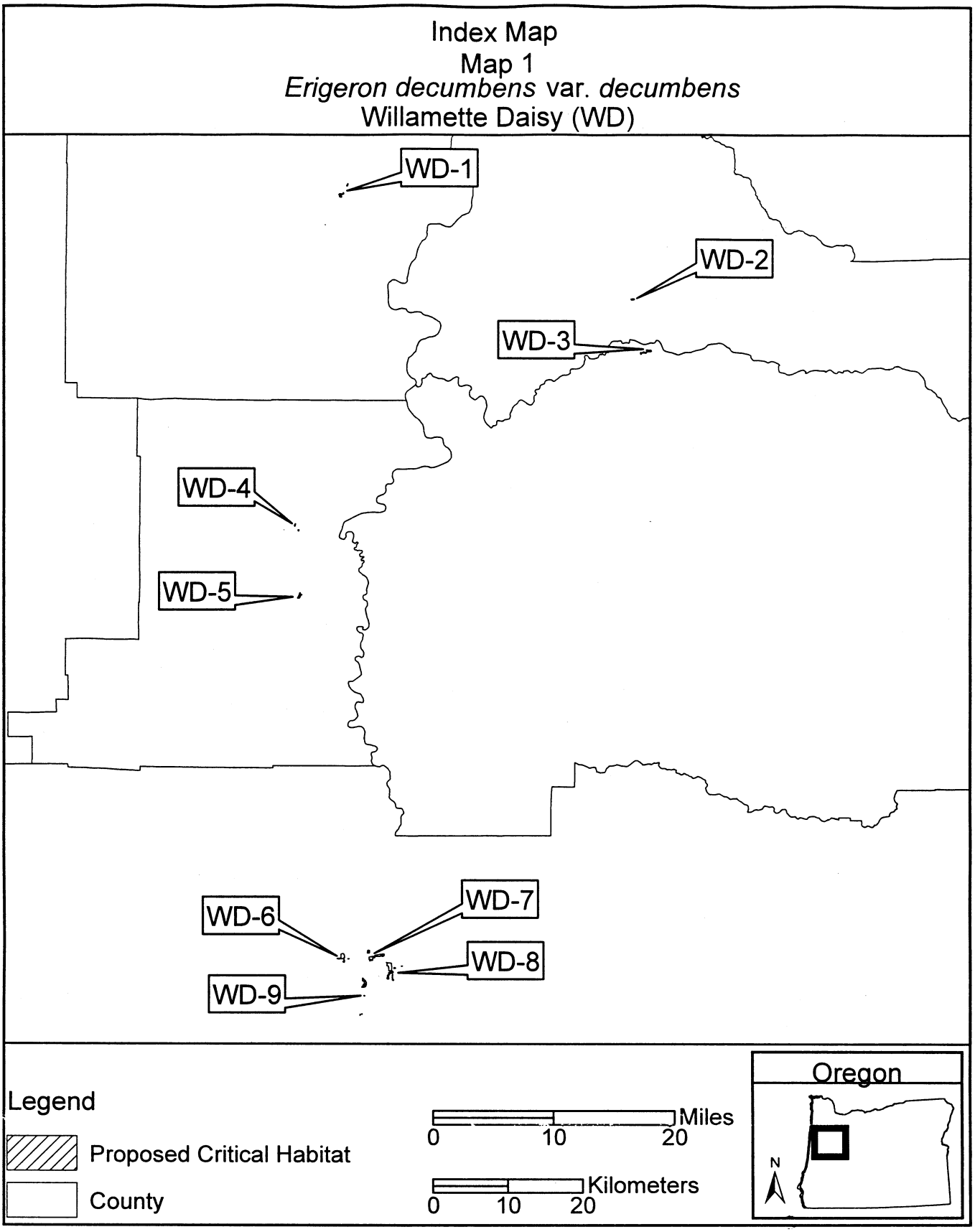
(1) Critical habitat units are depicted for Benton, Lane, Linn, Marion, Polk Counties, Oregon, on the maps below.

(2) The primary constituent elements of critical habitat for *Erigeron decumbens* var. *decumbens* are the habitat components that provide early seral upland prairie, oak savanna habitat with a mosaic of low growing grasses, forbs, and spaces to establish seedlings or new vegetative growth, with an absence of dense canopy vegetation providing sunlight for individual and population growth and reproduction and with undisturbed subsoils and proper moisture and protection from competitive invasive species.

(3) Critical habitat does not include humanmade structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(4) Critical habitat units are described below. Data layers defining map units were created using USGS 2000 Digital Ortho Quads 24,000 in projection Universal Transverse Mercator (UTM) zone 10, North American Datum (NAD) 27.

(5) **Note:** Map 1 (Index map for *Erigeron decumbens* var. *decumbens*) follows:

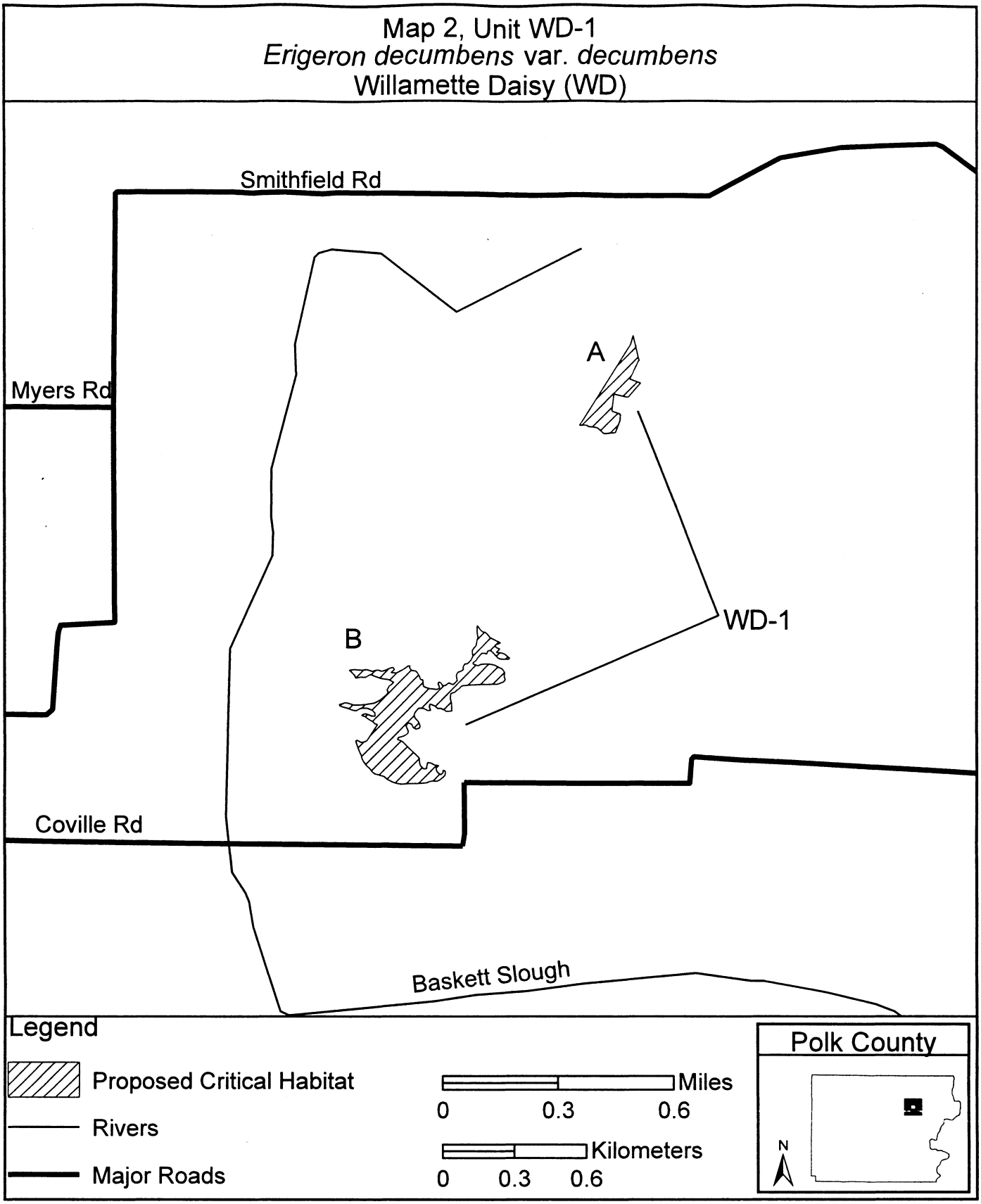

Index Map
Map 1
Erigeron decumbens var. decumbens
Willamette Daisy (WD)
WD-1
WD-2
WD-3
WD-4
WD-5
WD-6
WD-7
WD-8
WD-9
Legend
Proposed Critical Habitat
County
Miles
0
10
20
Kilometers
0
10
20
Oregon
N

(6) Unit 1 for *Erigeron decumbens* var. *decumbens* (WD–1), Polk County, Oregon.

(i) Unit 1A (WD–1A): 480393, 4980586; 480417, 4980484; 480379, 4980405; 480424, 4980390; 480372, 4980330; 480312, 4980343; 480304, 4980273; 480339, 4980261; 480339, 4980235; 480319, 4980183; 480271, 4980178; 480242, 4980204; 480206, 4980208; 480198, 4980215; 480170, 4980213; 480383, 4980550; 480393, 4980586.

(ii) Unit 1B (WD–1B): 479503, 4978804; 479509, 4978799; 479517, 4978791; 479530, 4978791; 479531, 4978803; 479534, 4978817; 479541, 4978817; 479549, 4978815; 479563, 4978808; 479581, 4978804; 479577, 4978801; 479569, 4978794; 479571, 4978782; 479583, 4978771; 479591, 4978767; 479599, 4978775; 479599, 4978786; 479608, 4978782; 479607, 4978764; 479597, 4978755; 479583, 4978744; 479571, 4978740; 479557, 4978741; 479547, 4978740; 479537, 4978736; 479531, 4978734; 479507, 4978732; 479481, 4978731; 479457, 4978731; 479425, 4978728; 479402, 4978732; 479385, 4978738; 479360, 4978751; 479354, 4978759; 479323, 4978769; 479313, 4978770; 479302, 4978778; 479292, 4978792; 479277, 4978804; 479266, 4978822; 479260, 4978834; 479255, 4978851; 479248, 4978865; 479239, 4978887; 479233, 4978904; 479239, 4978910; 479244, 4978907; 479255, 4978901; 479270, 4978903; 479280, 4978907; 479325, 4978974; 479314, 4978978; 479306, 4978985; 479283, 4978999; 479270, 4979009; 479260, 4979012; 479264, 4979017; 479274, 4979021; 479286, 4979017; 479299, 4979011; 479314, 4979010; 479314, 4979022; 479306, 4979031; 479297, 4979037; 479281, 4979043; 479263, 4979043; 479253, 4979041; 479237, 4979033; 479228, 4979034; 479209, 4979040; 479198, 4979044; 479184, 4979048; 479168, 4979053; 479167, 4979059; 479182, 4979062; 479188, 4979066; 479203, 4979065; 479228, 4979056; 479250, 4979056; 479277, 4979059; 479311, 4979065; 479337, 4979078; 479361, 4979097; 479369, 4979110; 479364, 4979119; 479373, 4979134; 479382, 4979140; 479393, 4979149; 479370, 4979161; 479341, 4979166; 479310, 4979176; 479295, 4979184; 479275, 4979171; 479254, 4979172; 479235, 4979167; 479229, 4979180; 479218, 4979190; 479209, 4979200; 479230, 4979204; 479243, 4979201; 479261, 4979200; 479277, 4979204; 479289, 4979200; 479304, 4979195; 479320, 4979200; 479331, 4979200; 479342, 4979195; 479356, 4979199; 479368, 4979205; 479389, 4979212; 479395, 4979203; 479381, 4979190; 479404, 4979188; 479427, 4979200; 479443, 4979210; 479453, 4979218; 479462, 4979218; 479458, 4979211; 479467, 4979200; 479475, 4979198; 479482, 4979198; 479490, 4979191; 479499, 4979179; 479501, 4979169; 479506, 4979161; 479514, 4979160; 479517, 4979134; 479531, 4979128; 479544, 4979124; 479574, 4979121; 479583, 4979125; 479584, 4979130; 479578, 4979144; 479582, 4979153; 479591, 4979146; 479597, 4979136; 479610, 4979137; 479624, 4979148; 479633, 4979143; 479643, 4979140; 479653, 4979151; 479659, 4979156; 479656, 4979168; 479654, 4979180; 479662, 4979192; 479673, 4979195; 479684, 4979201; 479683, 4979213; 479691, 4979228; 479702, 4979226; 479714, 4979238; 479721, 4979251; 479723, 4979260; 479722, 4979270; 479721, 4979281; 479728, 4979291; 479737, 4979301; 479740, 4979320; 479745, 4979336; 479741, 4979358; 479741, 4979377; 479744, 4979386; 479757, 4979367; 479765, 4979358; 479775, 4979358; 479788, 4979347; 479796, 4979335; 479809, 4979329; 479830, 4979318; 479840, 4979313; 479817, 4979304; 479821, 4979295; 479838, 4979287; 479823, 4979273; 479839, 4979273; 479854, 4979268; 479870, 4979256; 479878, 4979250; 479874, 4979244; 479841, 4979247; 479829, 4979250; 479823, 4979256; 479808, 4979274; 479797, 4979282; 479786, 4979280; 479782, 4979267; 479773, 4979270; 479761, 4979270; 479751, 4979259; 479744, 4979249; 479737, 4979239; 479723, 4979230; 479727, 4979224; 479746, 4979218; 479758, 4979224; 479778, 4979226; 479790, 4979226; 479814, 4979222; 479826, 4979216; 479847, 4979205; 479857, 4979192; 479855, 4979172; 479859, 4979160; 479853, 4979153; 479827, 4979142; 479769, 4979141; 479708, 4979138; 479679, 4979136; 479673, 4979131; 479669, 4979125; 479658, 4979117; 479649, 4979110; 479632, 4979104; 479629, 4979085; 479634, 4979063; 479635, 4979041; 479637, 4979031; 479612, 4979030; 479602, 4979037; 479587, 4979043; 479577, 4979041; 479563, 4979053; 479545, 4979061; 479541, 4979049; 479547, 4979034; 479533, 4979034; 479518, 4979042; 479497, 4979043; 479486, 4979029; 479480, 4979021; 479478, 4979011; 479483, 4978999; 479496, 4978986; 479503, 4978968; 479500, 4978960; 479487, 4978955; 479476, 4978961; 479469, 4978975; 479453, 4978983; 479444, 4978970; 479453, 4978947; 479451, 4978937; 479434, 4978927; 479412, 4978921; 479408, 4978912; 479424, 4978908; 479430, 4978904; 479499, 4978836; 479500, 4978819; 479503, 4978804.

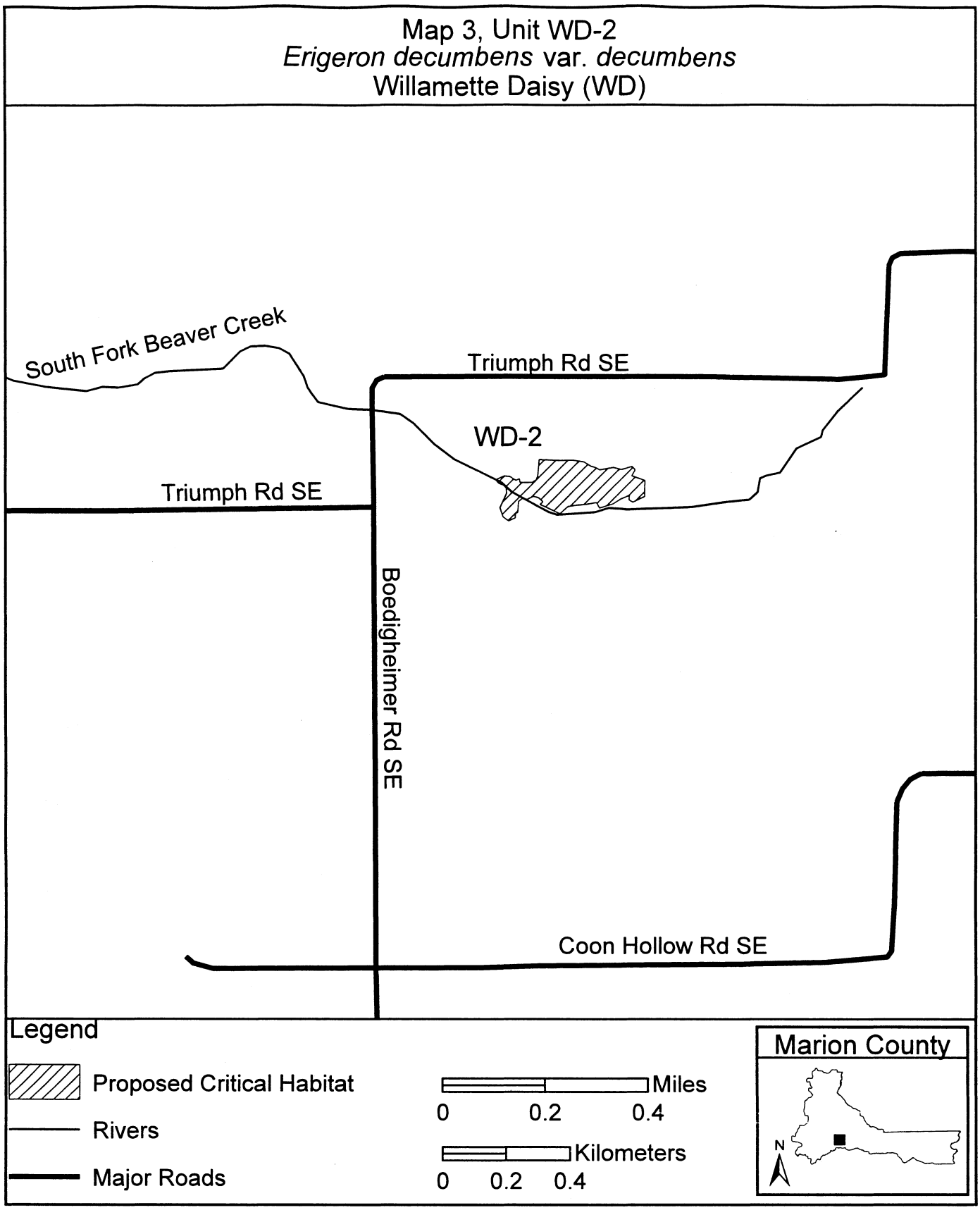
(iii) **Note:** Map 2 of Unit 1 for *Erigeron decumbens* var. *decumbens* (WD–1) follows:


Map 2, Unit WD-1
Erigeron decumbens var. decumbens
Willamette Daisy (WD)
Smithfield Rd
Myers Rd
A
B
WD-1
Coville Rd
Baskett Slough
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0
0.3
0.6
Kilometers
0
0.3
0.6
Polk County
N

(7) Unit 2 for *Erigeron decumbens* var. *decumbens*, Marion County, Oregon.

(i) Unit 2: 518439, 4965420; 518478, 4965420; 518509, 4965415; 518530, 4965402; 518545, 4965398; 518558, 4965390; 518602, 4965398; 518627, 4965391; 518660, 4965400; 518669, 4965390; 518659, 4965371; 518700, 4965357; 518698, 4965306; 518661, 4965289; 518650, 4965297; 518651, 4965310; 518626, 4965300; 518601, 4965284; 518558, 4965272; 518549, 4965289; 518516, 4965282; 518489, 4965281; 518460, 4965276; 518435, 4965253; 518373, 4965282; 518382, 4965290; 518368, 4965304; 518352, 4965308; 518331, 4965298; 518319, 4965302; 518305, 4965291; 518303, 4965258; 518295, 4965254; 518295, 4965241; 518274, 4965231; 518256, 4965244; 518247, 4965272; 518269, 4965319; 518267, 4965322; 518267, 4965333; 518256, 4965344; 518243, 4965349; 518233, 4965359; 518260, 4965371; 518278, 4965370; 518297, 4965357; 518308, 4965363; 518310, 4965351; 518348, 4965351; 518361, 4965359; 518366, 4965371; 518371, 4965422; 518439, 4965420.

(ii) **Note:** Map 3 of Unit 2 for *Erigeron decumbens* var. *decumbens* (WD–2) follows:


Map 3, Unit WD-2
Erigeron decumbens var. decumbens
Willamette Daisy (WD)
South Fork Beaver Creek
Triumph Rd SE
WD-2
Triumph Rd SE
Boedigheimer Rd SE
Coon Hollow Rd SE
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.2 0.4
Kilometers
0 0.2 0.4
Marion County
N

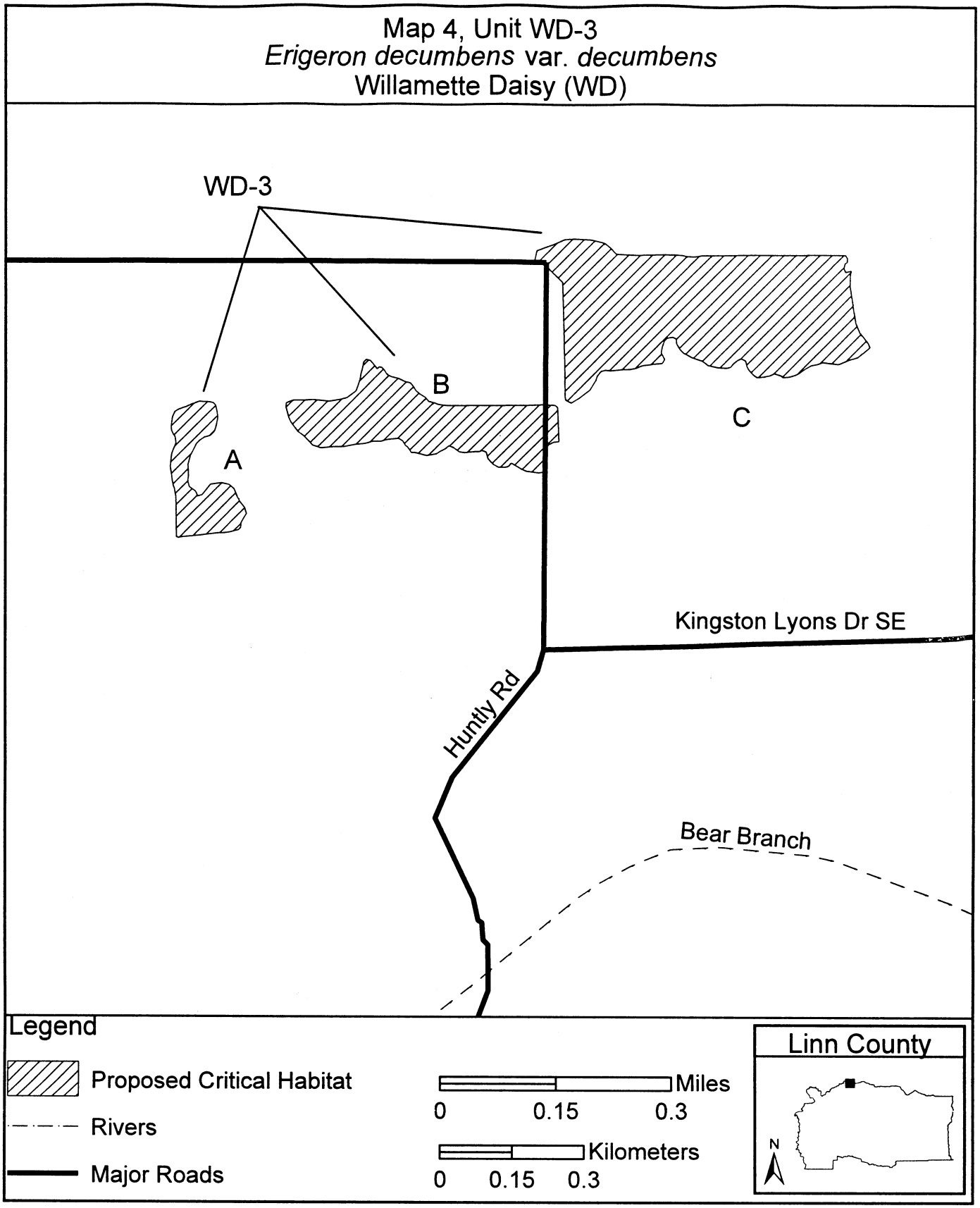
(8) Unit 3 for *Erigeron decumbens* var. *decumbens* (WD–3), Linn County, Oregon.

(i) Unit 3A (WD–3A): 519562, 4958125; 519579, 4958147; 519602, 4958149; 519617, 4958146; 519628, 4958137; 519635, 4958121; 519641, 4958109; 519650, 4958098; 519654, 4958084; 519648, 4958076; 519642, 4958065; 519642, 4958062; 519642, 4958055; 519638, 4958051; 519619, 4958047; 519607, 4958045; 519595, 4958045; 519544, 4958039; 519519, 4958037; 519512, 4958035; 519508, 4958037; 519506, 4958122; 519505, 4958128; 519503, 4958137; 519501, 4958144; 519498, 4958156; 519497, 4958164; 519494, 4958183; 519496, 4958201; 519497, 4958210; 519501, 4958218; 519505, 4958227; 519506, 4958233; 519505, 4958243; 519505, 4958245; 519501, 4958249; 519497, 4958260; 519496, 4958267; 519497, 4958272; 519498, 4958284; 519499, 4958288; 519504, 4958298; 519512, 4958303; 519528, 4958309; 519539, 4958314; 519545, 4958316; 519555, 4958320; 519563, 4958319; 519574, 4958319; 519585, 4958317; 519589, 4958311; 519592, 4958298; 519593, 4958286; 519592, 4958277; 519590, 4958266; 519587, 4958257; 519583, 4958253; 519578, 4958248; 519566, 4958245; 519557, 4958238; 519549, 4958230; 519541, 4958214; 519536, 4958205; 519532, 4958187; 519532, 4958176; 519532, 4958162; 519532, 4958156; 519532, 4958152; 519535, 4958141; 519547, 4958132; 519549, 4958129; 519551, 4958122; 519562, 4958125.

(ii) Unit 3B (WD–3B): 519791, 4958229; 519783, 4958238; 519773, 4958248; 519762, 4958256; 519747, 4958275; 519741, 4958287; 519735, 4958308; 519737, 4958317; 519751, 4958323; 519775, 4958323; 519793, 4958324; 519827, 4958320; 519847, 4958324; 519864, 4958327; 519883, 4958342; 519889, 4958360; 519891, 4958367; 519893, 4958376; 519896, 4958389; 519898, 4958401; 519904, 4958407; 519913, 4958405; 519922, 4958394; 519927, 4958387; 519932, 4958392; 519937, 4958390; 519943, 4958385; 519949, 4958375; 519957, 4958371; 519972, 4958368; 519984, 4958362; 519997, 4958358; 520004, 4958350; 520009, 4958342; 520019, 4958335; 520029, 4958327; 520035, 4958320; 520047, 4958318; 520056, 4958314; 520072, 4958312; 520238, 4958313; 520275, 4958314; 520299, 4958313; 520305, 4958308; 520307, 4958237; 520296, 4958236; 520285, 4958230; 520278, 4958217; 520275, 4958206; 520274, 4958185; 520276, 4958174; 520265, 4958171; 520239, 4958175; 520228, 4958180; 520208, 4958192; 520203, 4958186; 520197, 4958183; 520181, 4958183; 520170, 4958189; 520159, 4958201; 520156, 4958214; 520147, 4958218; 520141, 4958215; 520133, 4958215; 520124, 4958214; 520113, 4958213; 520100, 4958214; 520087, 4958224; 520078, 4958227; 520072, 4958223; 520062, 4958217; 520052, 4958211; 520032, 4958207; 520008, 4958213; 520000, 4958213; 519993, 4958224; 519988, 4958227; 519982, 4958237; 519972, 4958243; 519951, 4958240; 519935, 4958237; 519919, 4958237; 519903, 4958232; 519882, 4958230; 519857, 4958225; 519837, 4958225; 519809, 4958223; 519791, 4958229.

(iii) Unit 3C (WD–3C): 520319, 4958402; 520318, 4958432; 520318, 4958451; 520314, 4958568; 520279, 4958601; 520256, 4958614; 520260, 4958633; 520294, 4958645; 520319, 4958656; 520339, 4958657; 520375, 4958655; 520402, 4958649; 520415, 4958638; 520426, 4958626; 520468, 4958624; 520525, 4958625; 520563, 4958624; 520576, 4958621; 520591, 4958621; 520607, 4958624; 520896, 4958625; 520906, 4958625; 520909, 4958619; 520909, 4958611; 520905, 4958607; 520902, 4958598; 520906, 4958589; 520918, 4958593; 520915, 4958581; 520915, 4958560; 520920, 4958529; 520922, 4958512; 520927, 4958483; 520936, 4958464; 520944, 4958455; 520953, 4958443; 520957, 4958433; 520949, 4958426; 520932, 4958413; 520912, 4958407; 520891, 4958399; 520870, 4958401; 520858, 4958402; 520847, 4958399; 520836, 4958396; 520822, 4958389; 520811, 4958381; 520801, 4958376; 520789, 4958373; 520775, 4958371; 520771, 4958375; 520757, 4958380; 520749, 4958375; 520736, 4958373; 520721, 4958371; 520713, 4958377; 520705, 4958387; 520700, 4958395; 520697, 4958406; 520688, 4958411; 520681, 4958407; 520672, 4958400; 520666, 4958393; 520658, 4958390; 520641, 4958392; 520619, 4958396; 520613, 4958401; 520605, 4958406; 520591, 4958411; 520584, 4958413; 520574, 4958419; 520568, 4958421; 520560, 4958429; 520553, 4958442; 520552, 4958451; 520545, 4958455; 520533, 4958452; 520527, 4958445; 520524, 4958436; 520521, 4958423; 520526, 4958413; 520528, 4958408; 520524, 4958400; 520509, 4958399; 520494, 4958396; 520482, 4958395; 520468, 4958389; 520455, 4958387; 520441, 4958387; 520415, 4958385; 520405, 4958386; 520395, 4958383; 520387, 4958373; 520384, 4958364; 520371, 4958344; 520350, 4958327; 520333, 4958318; 520321, 4958324; 520320, 4958331; 520319, 4958402.

(iv) **Note:** Map 4 of Unit 3 for *Erigeron decumbens* var. *decumbens* (WD–3) follows:

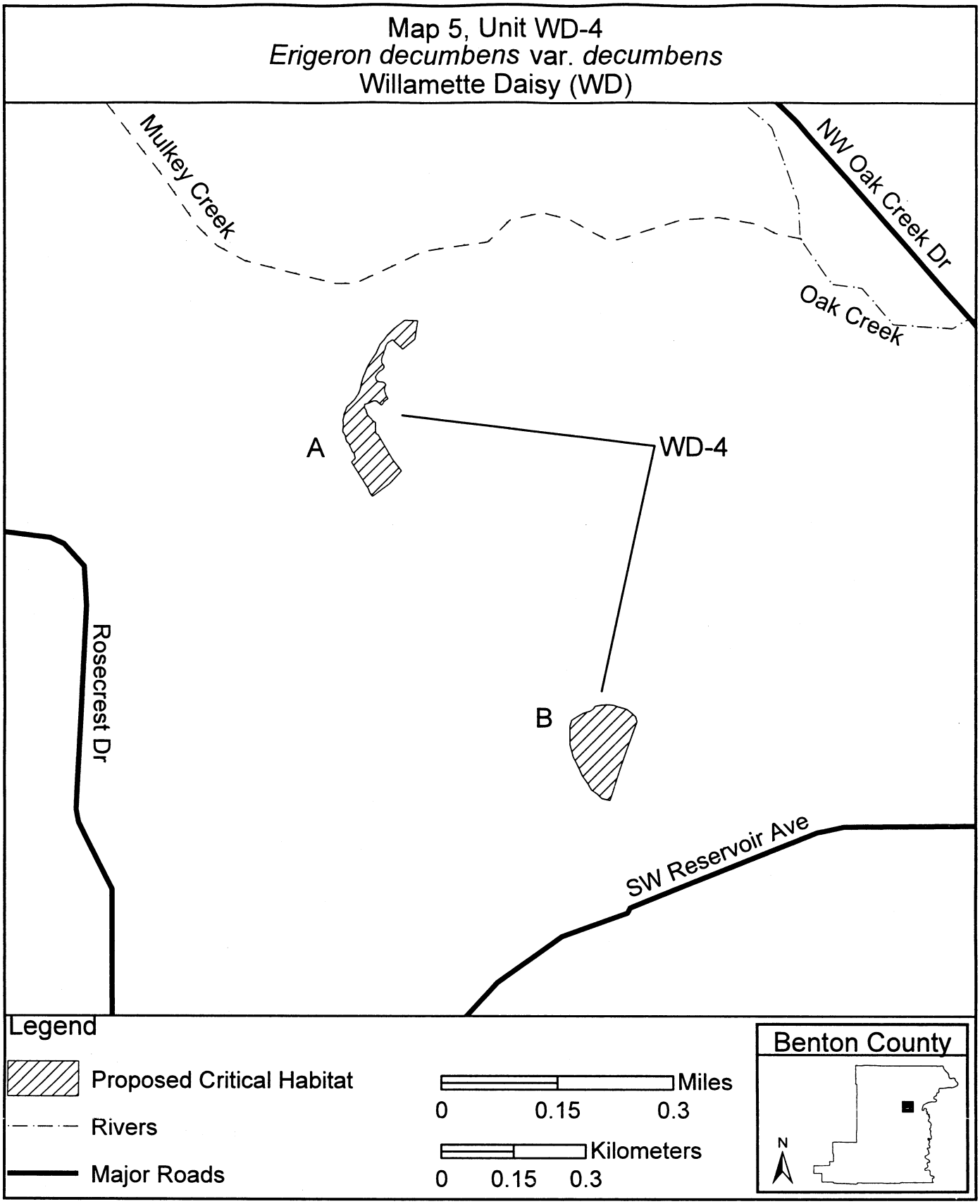

Map 4, Unit WD-3
Erigeron decumbens var. decumbens
Willamette Daisy (WD)
WD-3
A
B
C
Kingston Lyons Dr SE
Huntly Rd
Bear Branch
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0
0.15
0.3
Kilometers
0
0.15
0.3
Linn County
N

(9) Unit 4 for *Erigeron decumbens* var. *decumbens* (WD–4), Benton County, Oregon.

(i) Unit 4A (WD–4A): 473333, 4935091; 473298, 4935146; 473306, 4935153; 473303, 4935164; 473299, 4935168; 473297, 4935173; 473295, 4935178; 473293, 4935183; 473288, 4935189; 473286, 4935194; 473284, 4935202; 473282, 4935206; 473279, 4935209; 473281, 4935220; 473281, 4935226; 473280, 4935233; 473282, 4935241; 473282, 4935246; 473284, 4935251; 473288, 4935260; 473296, 4935267; 473303, 4935275; 473312, 4935288; 473316, 4935299; 473319, 4935311; 473322, 4935323; 473327, 4935333; 473330, 4935342; 473335, 4935351; 473341, 4935361; 473349, 4935372; 473352, 4935380; 473357, 4935391; 473366, 4935400; 473373, 4935410; 473378, 4935416; 473388, 4935424; 473410, 4935441; 473437, 4935441; 473431, 4935402; 473406, 4935381; 473384, 4935401; 473380, 4935398; 473374, 4935394; 473370, 4935388; 473368, 4935380; 473366, 4935376; 473365, 4935371; 473363, 4935367; 473361, 4935361; 473361, 4935354; 473366, 4935347; 473366, 4935343; 473363, 4935338; 473357, 4935335; 473352, 4935331; 473348, 4935324; 473350, 4935318; 473352, 4935314; 473357, 4935313; 473362, 4935313; 473365, 4935312; 473368, 4935310; 473370, 4935307; 473367, 4935300; 473367, 4935294; 473369, 4935288; 473370, 4935285; 473373, 4935281; 473375, 4935278; 473374, 4935277; 473371, 4935276; 473369, 4935274; 473366, 4935273; 473365, 4935270; 473364, 4935268; 473361, 4935264; 473357, 4935268; 473355, 4935269; 473352, 4935272; 473351, 4935274; 473345, 4935274; 473340, 4935272; 473337, 4935270; 473333, 4935269; 473326, 4935266; 473325, 4935260; 473328, 4935255; 473329, 4935250; 473331, 4935246; 473333, 4935242; 473337, 4935238; 473340, 4935236; 473342, 4935232; 473348, 4935228; 473348, 4935225; 473348, 4935216; 473348, 4935211; 473350, 4935205; 473354, 4935202; 473382, 4935154; 473403, 4935128; 473379, 4935102; 473342, 4935074; 473336, 4935083; 473333, 4935091.

(ii) Unit 4B (WD–4B): 473894, 4934609; 473855, 4934497; 473838, 4934445; 473821, 4934449; 473811, 4934458; 473800, 4934466; 473793, 4934479; 473780, 4934496; 473770, 4934518; 473760, 4934538; 473758, 4934544; 473754, 4934561; 473754, 4934599; 473757, 4934611; 473766, 4934617; 473774, 4934622; 473782, 4934626; 473789, 4934629; 473796, 4934630; 473803, 4934635; 473807, 4934641; 473815, 4934642; 473821, 4934643; 473831, 4934644; 473845, 4934643; 473857, 4934639; 473873, 4934635; 473882, 4934628; 473892, 4934619; 473894, 4934609.

(iii) **Note:** Map 5 of Unit 4 for *Erigeron decumbens* var. *decumbens* (WD–4) follows:

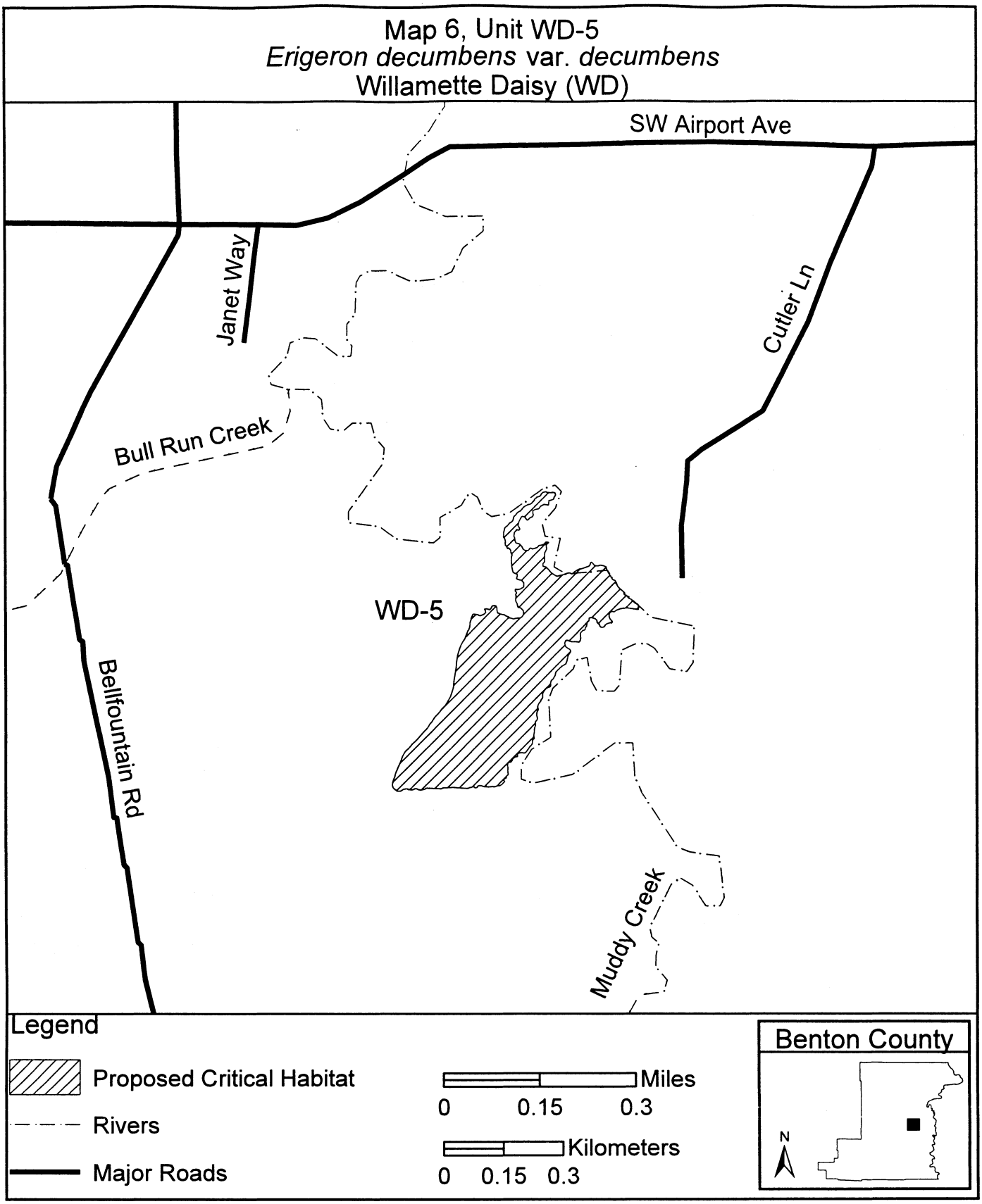

Map 5, Unit WD-4
Erigeron decumbens var. decumbens
Willamette Daisy (WD)
Mulkey Creek
NW Oak Creek Dr
Oak Creek
A
WD-4
B
Rosecrest Dr
SW Reservoir Ave
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.15 0.3
Kilometers
0 0.15 0.3
Benton County
N

(10) Unit 5 of *Erigeron decumbens* var. *decumbens* (WD–5), Benton County, Oregon.

(i) Unit 5 (WD–5): 474091, 4926323; 474091, 4926315; 474088, 4926311; 474087, 4926307; 474083, 4926305; 474079, 4926304; 474074, 4926304; 474074, 4926299; 474074, 4926292; 474070, 4926293; 474063, 4926294; 474054, 4926289; 474049, 4926283; 474044, 4926282; 474040, 4926281; 474034, 4926277; 474034, 4926271; 474035, 4926268; 474034, 4926263; 474027, 4926260; 474024, 4926256; 474020, 4926254; 474017, 4926259; 474014, 4926263; 474007, 4926264; 474003, 4926259; 474000, 4926252; 473997, 4926247; 473997, 4926241; 474000, 4926236; 474002, 4926230; 473997, 4926229; 473993, 4926232; 473991, 4926227; 473988, 4926223; 473986, 4926215; 473989, 4926211; 473989, 4926205; 473992, 4926198; 473997, 4926197; 474000, 4926196; 474004, 4926192; 474007, 4926188; 474010, 4926183; 474014, 4926179; 474024, 4926179; 474025, 4926184; 474029, 4926186; 474033, 4926183; 474046, 4926187; 474050, 4926192; 474056, 4926192; 474063, 4926196; 474068, 4926201; 474074, 4926199; 474067, 4926192; 474069, 4926183; 474067, 4926179; 474064, 4926173; 474064, 4926166; 474064, 4926159; 474064, 4926150; 474060, 4926147; 474060, 4926140; 474067, 4926138; 474075, 4926131; 474080, 4926125; 474088, 4926119; 474092, 4926116; 474098, 4926115; 474100, 4926117; 474105, 4926118; 474112, 4926120; 474116, 4926121; 474120, 4926123; 474125, 4926124; 474127, 4926124; 474133, 4926121; 474135, 4926122; 474139, 4926126; 474142, 4926128; 474146, 4926131; 474151, 4926133; 474159, 4926135; 474165, 4926137; 474170, 4926139; 474176, 4926140; 474178, 4926144; 474179, 4926148; 474181, 4926151; 474185, 4926148; 474190, 4926142; 474198, 4926141; 474205, 4926144; 474211, 4926142; 474218, 4926140; 474220, 4926133; 474224, 4926124; 474229, 4926118; 474231, 4926112; 474235, 4926107; 474241, 4926105; 474244, 4926099; 474247, 4926090; 474252, 4926085; 474258, 4926080; 474262, 4926077; 474263, 4926070; 474270, 4926068; 474270, 4926066; 474274, 4926062; 474281, 4926058; 474287, 4926053; 474290, 4926049; 474297, 4926046; 474299, 4926041; 474299, 4926033; 474286, 4926035; 474270, 4926037; 474257, 4926036; 474245, 4926032; 474238, 4926027; 474233, 4926028; 474229, 4926026; 474226, 4926022; 474225, 4926016; 474228, 4926010; 474234, 4926003; 474232, 4926000; 474229, 4926001; 474222, 4925999; 474215, 4925995; 474213, 4925990; 474205, 4925989; 474202, 4925992; 474202, 4925995; 474198, 4925999; 474195, 4926002; 474195, 4926006; 474191, 4926011; 474185, 4926013; 474180, 4926014; 474176, 4926012; 474176, 4926005; 474171, 4926003; 474170, 4925997; 474169, 4925992; 474166, 4925988; 474165, 4925983; 474159, 4925982; 474158, 4925978; 474153, 4925975; 474154, 4925960; 474151, 4925953; 474146, 4925953; 474140, 4925954; 474132, 4925953; 474127, 4925954; 474123, 4925957; 474117, 4925957; 474114, 4925950; 474116, 4925943; 474118, 4925940; 474124, 4925936; 474127, 4925935; 474130, 4925929; 474126, 4925924; 474123, 4925919; 474120, 4925908; 474119, 4925903; 474117, 4925897; 474107, 4925892; 474103, 4925888; 474098, 4925884; 474092, 4925877; 474089, 4925868; 474085, 4925860; 474080, 4925856; 474078, 4925851; 474079, 4925845; 474077, 4925841; 474071, 4925839; 474067, 4925836; 474062, 4925829; 474059, 4925823; 474059, 4925812; 474055, 4925809; 474053, 4925804; 474049, 4925800; 474048, 4925795; 474046, 4925791; 474048, 4925787; 474048, 4925783; 474045, 4925778; 474043, 4925770; 474046, 4925763; 474045, 4925758; 474041, 4925754; 474041, 4925748; 474041, 4925744; 474039, 4925741; 474038, 4925734; 474038, 4925729; 474036, 4925720; 474037, 4925712; 474034, 4925710; 474032, 4925706; 474032, 4925699; 474029, 4925694; 474025, 4925690; 474022, 4925685; 474020, 4925681; 474018, 4925678; 474014, 4925676; 474010, 4925676; 474009, 4925677; 474005, 4925677; 473998, 4925676; 473995, 4925673; 473995, 4925671; 473996, 4925667; 473992, 4925667; 473989, 4925666; 473985, 4925663; 473983, 4925660; 473982, 4925658; 473979, 4925653; 473977, 4925653; 473974, 4925653; 473971, 4925650; 473970, 4925647; 473971, 4925639; 473971, 4925632; 473972, 4925624; 473971, 4925621; 473967, 4925618; 473967, 4925613; 473963, 4925612; 473961, 4925608; 473964, 4925605; 473960, 4925601; 473957, 4925598; 473951, 4925594; 473944, 4925594; 473938, 4925592; 473935, 4925592; 473932, 4925593; 473927, 4925592; 473909, 4925592; 473905, 4925594; 473900, 4925595; 473895, 4925593; 473894, 4925590; 473888, 4925588; 473886, 4925592; 473882, 4925592; 473879, 4925589; 473877, 4925591; 473869, 4925588; 473840, 4925589; 473833, 4925590; 473815, 4925589; 473808, 4925589; 473805, 4925587; 473766, 4925588; 473763, 4925585; 473755, 4925584; 473754, 4925582; 473749, 4925584; 473744, 4925585; 473742, 4925587; 473738, 4925587; 473731, 4925584; 473721, 4925584; 473719, 4925587; 473710, 4925586; 473706, 4925583; 473703, 4925581; 473693, 4925580; 473683, 4925589; 473681, 4925596; 473683, 4925605; 473687, 4925618; 473690, 4925628; 473696, 4925641; 473702, 4925655; 473706, 4925667; 473713, 4925679; 473724, 4925689; 473731, 4925698; 473742, 4925708; 473752, 4925720; 473761, 4925729; 473769, 4925738; 473775, 4925747; 473781, 4925754; 473785, 4925761; 473791, 4925769; 473798, 4925776; 473806, 4925787; 473814, 4925794; 473822, 4925808; 473827, 4925816; 473830, 4925827; 473834, 4925839; 473836, 4925856; 473839, 4925872; 473841, 4925888; 473843, 4925905; 473845, 4925919; 473848, 4925931; 473853, 4925943; 473857, 4925951; 473862, 4925960; 473866, 4925969; 473868, 4925975; 473870, 4925979; 473873, 4925982; 473873, 4925985; 473875, 4925989; 473876, 4925994; 473876, 4925997; 473876, 4926002; 473879, 4926008; 473879, 4926012; 473881, 4926016; 473883, 4926020; 473884, 4926022; 473886, 4926023; 473890, 4926021; 473894, 4926021; 473896, 4926021; 473897, 4926020; 473901, 4926018; 473903, 4926018; 473909, 4926021; 473912, 4926021; 473915, 4926025; 473915, 4926030; 473914, 4926032; 473913, 4926034; 473917, 4926035; 473920, 4926035; 473925, 4926033; 473928, 4926034; 473929, 4926036; 473931, 4926040; 473934, 4926043; 473938, 4926043; 473942, 4926042; 473944, 4926038; 473944, 4926036; 473944, 4926031; 473945, 4926025; 473948, 4926024; 473956, 4926021; 473961, 4926021; 473965, 4926019; 473968, 4926017; 473972, 4926016; 473977, 4926013; 473979, 4926011; 473986, 4926010; 473990, 4926011; 473994, 4926012; 473998, 4926013; 474003, 4926013; 474008, 4926016; 474010, 4926021; 474010, 4926025; 474010, 4926030; 474004, 4926036; 474000, 4926038; 473997, 4926038; 473996, 4926043; 473995, 4926048; 473992, 4926053; 473990, 4926057; 473992, 4926067; 473990, 4926069; 473991, 4926071; 473993, 4926073; 473993, 4926075; 473990, 4926078; 473990, 4926084; 473993, 4926082; 473997, 4926082; 474004, 4926084; 474011, 4926089; 474011, 4926094; 474011, 4926099; 474006, 4926105; 474000, 4926106; 473994, 4926108; 473993, 4926110; 473995, 4926116; 473996, 4926120; 473989, 4926123; 473985, 4926124; 473983, 4926131; 473981, 4926141;

473981, 4926142; 473981, 4926149; 473980, 4926156; 473981, 4926163; 473982, 4926169; 473979, 4926174; 473978, 4926180; 473972, 4926186; 473971, 4926184; 473968, 4926189; 473965, 4926194; 473965, 4926201; 473964, 4926208; 473961, 4926213; 473961, 4926218; 473961, 4926225; 473963, 4926230; 473964, 4926235; 473967, 4926238; 473971, 4926241; 473974, 4926245; 473975, 4926247; 473981, 4926250; 473984, 4926253; 473985, 4926258; 473987, 4926264; 473991, 4926267; 473992, 4926269; 473996, 4926273; 473999, 4926275; 474004, 4926278; 474005, 4926279; 474009, 4926284; 474013, 4926288; 474017, 4926290; 474019, 4926291; 474021, 4926293; 474024, 4926293; 474027, 4926294; 474031, 4926297; 474035, 4926301; 474037, 4926303; 474039, 4926307; 474043, 4926310; 474045, 4926312; 474049, 4926313; 474050, 4926313; 474052, 4926314; 474054, 4926315; 474055, 4926318; 474057, 4926321; 474059, 4926323; 474063, 4926325; 474067, 4926326; 474070, 4926324; 474073, 4926323; 474080, 4926323; 474086, 4926324; 474091, 4926323.

(ii) **Note:** Map 6 of Unit 5 for *Erigeron decumbens* var. *decumbens* (WD–5) follows:


Map 6, Unit WD-5
Erigeron decumbens var. decumbens
Willamette Daisy (WD)
SW Airport Ave
Janet Way
Cutler Ln
Bull Run Creek
WD-5
Bellfountain Rd
Muddy Creek
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.15 0.3
Kilometers
0 0.15 0.3
Benton County
N

(11) Unit 6 of *Erigeron decumbens* var. *decumbens* (WD–6), Lane County, Oregon.

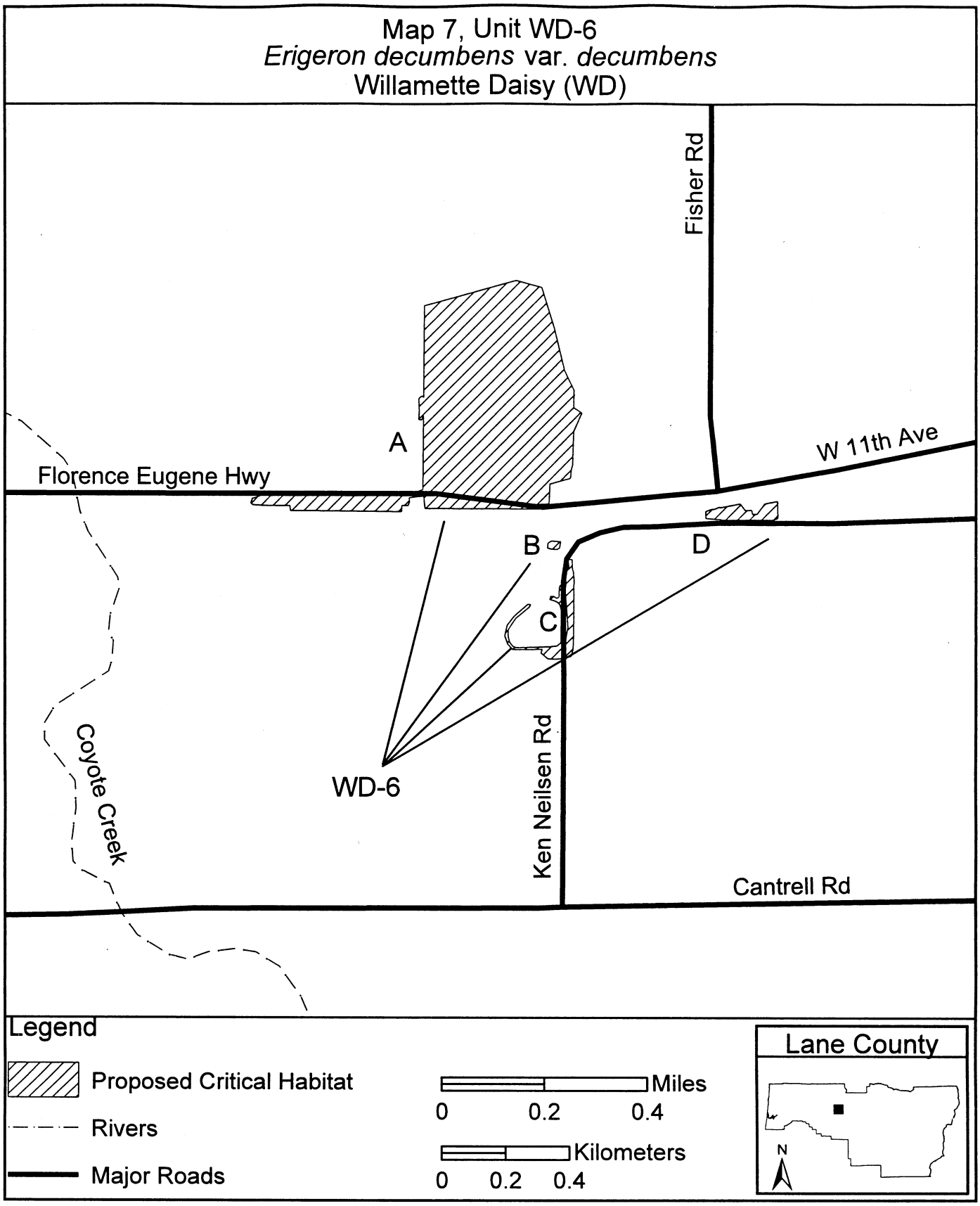
(i) Unit 6A (WD–6A): 479004, 4877770; 478975, 4877772; 478968, 4877777; 478973, 4877791; 478982, 4877794; 479002, 4877802; 479105, 4877802; 479109, 4877806; 479163, 4877808; 479221, 4877806; 479298, 4877808; 479441, 4877808; 479448, 4877812; 479479, 4877810; 479477, 4877808; 479507, 4877819; 479509, 4878049; 479503, 4878036; 479494, 4878038; 479495, 4878064; 479495, 4878081; 479494, 4878101; 479503, 4878110; 479509, 4878106; 479511, 4878393; 479798, 4878473; 479879, 4878451; 479919, 4878324; 479950, 4878194; 479981, 4878131; 479980, 4878075; 480005, 4878058; 479979, 4878000; 479976, 4877895; 479973, 4877884; 479970, 4877854; 479905, 4877836; 479902, 4877775; 479866, 4877774; 479869, 4877759; 479513, 4877760; 479509, 4877798; 479466, 4877794; 479463, 4877792; 479464, 4877792; 479465, 4877781; 479461, 4877769; 479441, 4877769; 479440, 4877751; 479220, 4877753; 479148, 4877754; 479138, 4877753; 479138, 4877754; 479092, 4877754; 479090, 4877770; 479004, 4877770.

(ii) Unit 6B (WD–6B): 479925, 4877659; 479939, 4877658; 479938, 4877652; 479936, 4877638; 479929, 4877634; 479911, 4877635; 479898, 4877639; 479899, 4877653; 479910, 4877660; 479925, 4877659.

(iii) Unit 6C (WD–6C): 479882, 4877323; 479789, 4877322; 479773, 4877340; 479764, 4877365; 479771, 4877397; 479794, 4877426; 479837, 4877464; 479844, 4877462; 479841, 4877454; 479798, 4877419; 479784, 4877398; 479774, 4877383; 479775, 4877364; 479778, 4877346; 479790, 4877332; 479801, 4877328; 479900, 4877331; 479929, 4877334; 479940, 4877344; 479941, 4877446; 479937, 4877462; 479931, 4877469; 479920, 4877474; 479905, 4877478; 479908, 4877488; 479916, 4877488; 479928, 4877482; 479935, 4877486; 479934, 4877499; 479935, 4877513; 479938, 4877522; 479943, 4877523; 479948, 4877509; 479949, 4877344; 479947, 4877340; 479955, 4877348; 479963, 4877391; 479960, 4877425; 479954, 4877508; 479957, 4877527; 479954, 4877553; 479959, 4877572; 479964, 4877574; 479965, 4877580; 479963, 4877603; 479975, 4877603; 479976, 4877574; 479979, 4877568; 479982, 4877540; 479981, 4877511; 479981, 4877439; 479980, 4877368; 479979, 4877324; 479978, 4877323; 479978, 4877320; 479978, 4877320; 479973, 4877301; 479948, 4877295; 479922, 4877293; 479899, 4877294; 479894, 4877299; 479878, 4877312; 479882, 4877323.

(iv) Unit 6D (WD–6D): 480418, 4877759; 480435, 4877767; 480435, 4877764; 480500, 4877776; 480515, 4877756; 480520, 4877756; 480536, 4877756; 480538, 4877744; 480553, 4877744; 480577, 4877776; 480616, 4877784; 480618, 4877730; 480603, 4877726; 480494, 4877726; 480444, 4877726; 480436, 4877729; 480422, 4877729; 480392, 4877731; 480393, 4877753; 480411, 4877760; 480418, 4877759.

(v) **Note:** Map 7 of Unit 6 for *Erigeron decumbens* var. *decumbens* (WD–6) follows:

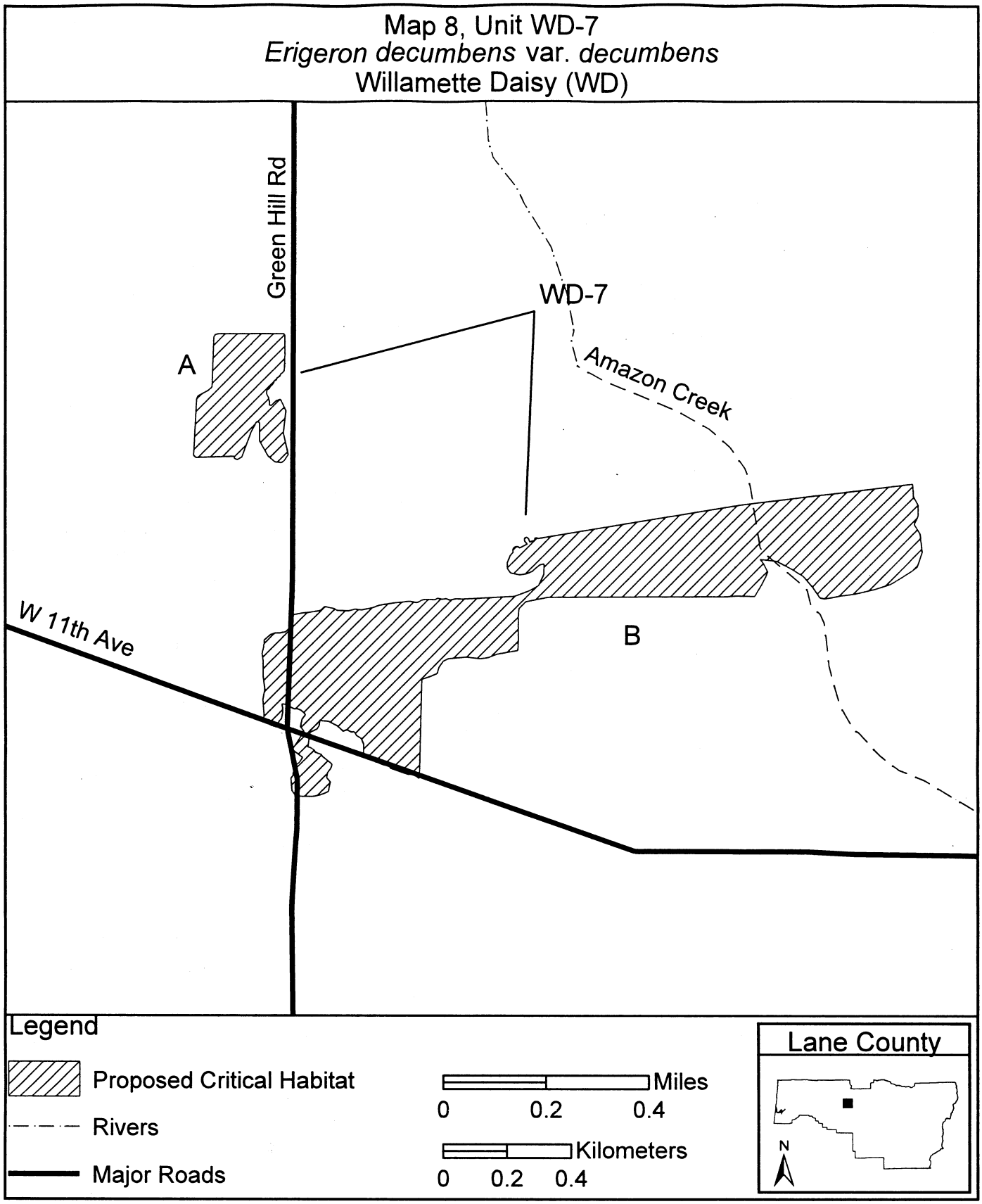

Map 7, Unit WD-6
Erigeron decumbens var. decumbens
Willamette Daisy (WD)
Fisher Rd
W 11th Ave
Florence Eugene Hwy
A
B
C
D
WD-6
Coyote Creek
Ken Neilsen Rd
Cantrell Rd
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.2 0.4
Kilometers
0 0.2 0.4
Lane County
N

(12) Unit 7 for *Erigeron decumbens* var. *decumbens* (WD–7), Lane County, Oregon.

(i) Unit 7A (WD–7A): 483220, 4878609; 483220, 4878615; 483217, 4878617; 483211, 4878618; 483207, 4878611; 483203, 4878602; 483192, 4878583; 483184, 4878561; 483164, 4878507; 483151, 4878499; 483141, 4878502; 483140, 4878509; 483019, 4878506; 483013, 4878513; 483013, 4878524; 483022, 4878686; 483026, 4878696; 483030, 4878700; 483059, 4878715; 483070, 4878725; 483076, 4878881; 483082, 4878888; 483092, 4878891; 483296, 4878892; 483299, 4878886; 483299, 4878836; 483298, 4878805; 483297, 4878777; 483292, 4878770; 483286, 4878767; 483282, 4878758; 483274, 4878754; 483272, 4878748; 483266, 4878745; 483264, 4878738; 483260, 4878732; 483253, 4878726; 483250, 4878720; 483244, 4878717; 483241, 4878706; 483246, 4878696; 483250, 4878685; 483251, 4878678; 483250, 4878670; 483258, 4878669; 483272, 4878683; 483285, 4878687; 483302, 4878653; 483294, 4878582; 483309, 4878514; 483297, 4878495; 483289, 4878490; 483268, 4878492; 483247, 4878510; 483220, 4878557; 483220, 4878609.

(ii) Unit 7B (WD–7B): 483434, 4877468; 483409, 4877458; 483389, 4877453; 483354, 4877453; 483333, 4877456; 483321, 4877471; 483318, 4877509; 483325, 4877517; 483325, 4877525; 483331, 4877540; 483332, 4877540; 483332, 4877550; 483344, 4877559; 483354, 4877574; 483328, 4877594; 483323, 4877597; 483323, 4877599; 483359, 4877655; 483347, 4877670; 483352, 4877691; 483363, 4877705; 483360, 4877711; 483349, 4877721; 483340, 4877725; 483337, 4877726; 483328, 4877725; 483301, 4877740; 483290, 4877740; 483292, 4877729; 483293, 4877723; 483293, 4877715; 483289, 4877694; 483281, 4877686; 483279, 4877679; 483265, 4877671; 483263, 4877674; 483258, 4877672; 483242, 4877686; 483239, 4877689; 483234, 4877690; 483234, 4877711; 483230, 4877753; 483237, 4877787; 483231, 4877827; 483231, 4877874; 483228, 4877895; 483233, 4877918; 483232, 4877922; 483235, 4877927; 483234, 4877928; 483234, 4877938; 483236, 4877939; 483256, 4877956; 483270, 4877961; 483284, 4877961; 483302, 4877964; 483311, 4877972; 483315, 4877979; 483315, 4877990; 483314, 4877996; 483315, 4877998; 483318, 4878012; 483322, 4878016; 483351, 4878022; 483376, 4878024; 483409, 4878030; 483424, 4878042; 483452, 4878036; 483461, 4878030; 483498, 4878029; 483518, 4878034; 483538, 4878032; 483571, 4878038; 483593, 4878046; 483617, 4878050; 483645, 4878054; 483668, 4878056; 483687, 4878058; 483699, 4878057; 483709, 4878054; 483718, 4878057; 483727, 4878063; 483736, 4878064; 483755, 4878064; 483768, 4878063; 483776, 4878068; 483791, 4878065; 483803, 4878066; 483813, 4878062; 483823, 4878064; 483832, 4878066; 483842, 4878066; 483855, 4878065; 484016, 4878074; 484063, 4878091; 484091, 4878107; 484108, 4878143; 484109, 4878176; 484096, 4878173; 484089, 4878167; 484073, 4878153; 484055, 4878144; 484032, 4878141; 484005, 4878147; 483994, 4878161; 483994, 4878179; 484003, 4878200; 484012, 4878210; 484011, 4878216; 484013, 4878222; 484017, 4878226; 484023, 4878229; 484028, 4878228; 484032, 4878224; 484056, 4878237; 484048, 4878244; 484047, 4878252; 484050, 4878256; 484055, 4878257; 484060, 4878253; 484064, 4878243; 484073, 4878246; 484079, 4878248; 484079, 4878253; 484082, 4878256; 484086, 4878256; 484090, 4878254; 484726, 4878359; 485260, 4878425; 485261, 4878387; 485276, 4878359; 485276, 4878324; 485264, 4878298; 485283, 4878271; 485286, 4878248; 485290, 4878211; 485280, 4878182; 485273, 4878164; 485255, 4878152; 485226, 4878134; 485191, 4878112; 485139, 4878096; 485082, 4878082; 485037, 4878076; 484986, 4878067; 484970, 4878070; 484949, 4878100; 484919, 4878135; 484885, 4878157; 484861, 4878170; 484835, 4878184; 484785, 4878189; 484796, 4878175; 484808, 4878152; 484802, 4878135; 484790, 4878112; 484768, 4878074; 484709, 4878076; 484682, 4878073; 484122, 4878072; 484053, 4878057; 484030, 4878036; 484029, 4878010; 484029, 4877979; 484029, 4877937; 484027, 4877906; 483963, 4877895; 483936, 4877885; 483911, 4877880; 483867, 4877886; 483809, 4877880; 483794, 4877873; 483780, 4877852; 483774, 4877835; 483752, 4877825; 483726, 4877816; 483719, 4877516; 483716, 4877509; 483704, 4877522; 483682, 4877522; 483627, 4877541; 483624, 4877559; 483607, 4877551; 483544, 4877576; 483544, 4877596; 483544, 4877617; 483537, 4877633; 483524, 4877641; 483515, 4877655; 483506, 4877653; 483492, 4877660; 483480, 4877656; 483461, 4877674; 483434, 4877687; 483418, 4877688; 483407, 4877690; 483406, 4877673; 483399, 4877663; 483377, 4877652; 483371, 4877607; 483376, 4877606; 483386, 4877599; 483390, 4877596; 483394, 4877589; 483397, 4877590; 483399, 4877588; 483413, 4877583; 483416, 4877577; 483441, 4877557; 483445, 4877552; 483441, 4877539; 483431, 4877527; 483429, 4877512; 483440, 4877498; 483434, 4877468.

(iii) **Note:** Map 8 of Unit 7 for *Erigeron decumbens* var. *decumbens* (WD–7) follows:


Map 8, Unit WD-7
Erigeron decumbens var. decumbens
Willamette Daisy (WD)
Green Hill Rd
WD-7
A
Amazon Creek
W 11th Ave
B
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.2 0.4
Kilometers
0 0.2 0.4
Lane County
N

(13) Unit 8 for *Erigeron decumbens* var. *decumbens* (WD–8), Lane County, Oregon.

(i) Unit 8A (WD–8A): 485625, 4876847; 485623, 4876992; 485625, 4877015; 485640, 4877044; 485665, 4877071; 485642, 4877087; 485633, 4877125; 485643, 4877218; 485623, 4877249; 485593, 4877249; 485562, 4877250; 485534, 4877251; 485535, 4877259; 485557, 4877293; 485561, 4877295; 485562, 4877284; 485629, 4877284; 485645, 4877274; 485654, 4877257; 485673, 4877230; 485694, 4877225; 485718, 4877215; 485737, 4877213; 485743, 4877226; 486046, 4877221; 486095, 4877215; 486136, 4877209; 486179, 4877192; 486205, 4877172; 486228, 4877154; 486257, 4877125; 486269, 4877102; 486266, 4876751; 486267, 4876727; 486279, 4876713; 486287, 4876694; 486294, 4876684; 486296, 4876591; 486286, 4876460; 486279, 4876449; 486270, 4876410; 486260, 4876389; 486252, 4876169; 485950, 4876177; 485863, 4876180; 485857, 4876232; 485863, 4876325; 485866, 4876383; 485866, 4876458; 485866, 4876496; 485857, 4876554; 485854, 4876621; 485852, 4876696; 485860, 4876742; 485840, 4876789; 485797, 4876824; 485759, 4876841; 485701, 4876856; 485657, 4876850; 485625, 4876847.

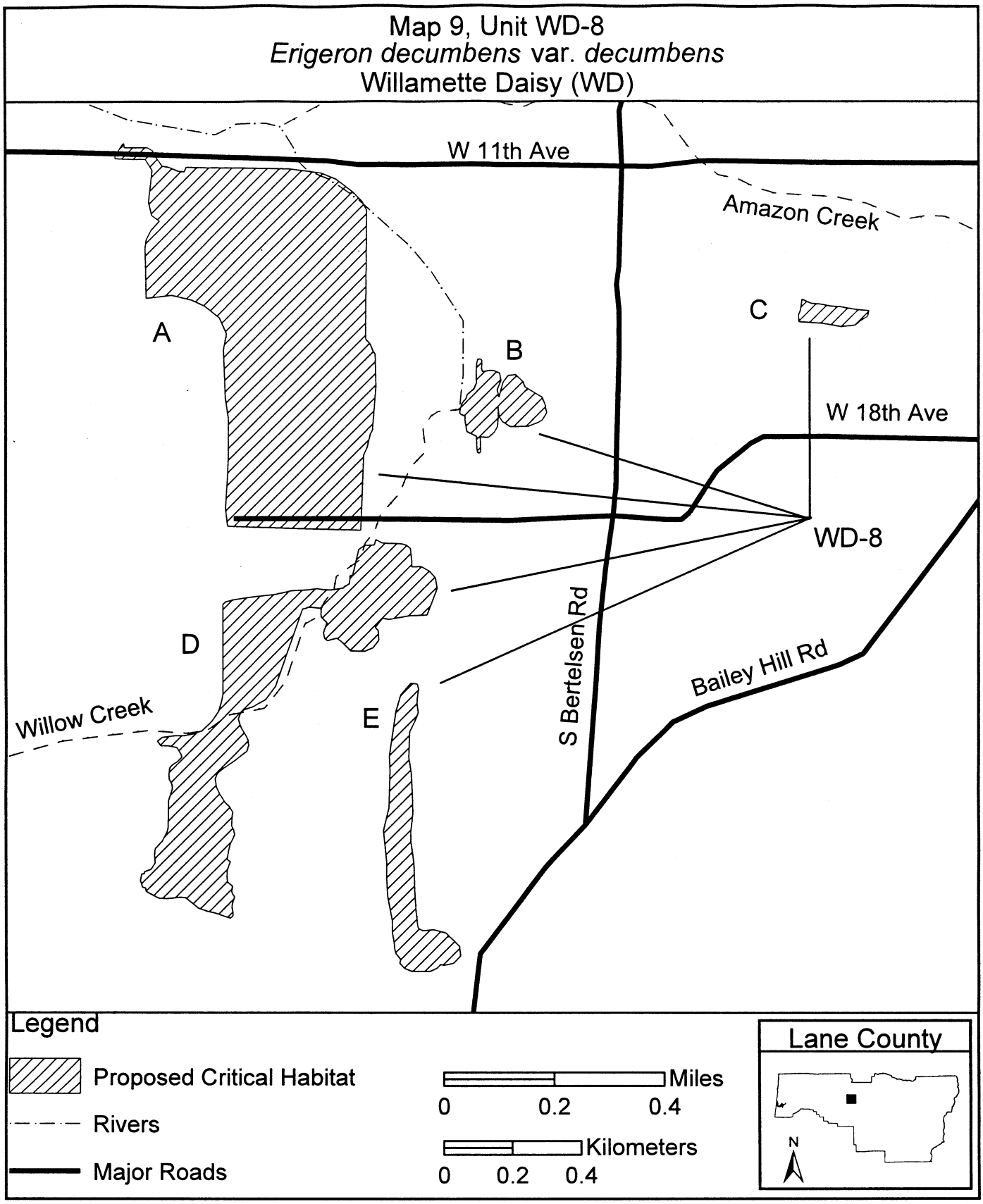
(ii) Unit 8B (WD–8B): 486657, 4876501; 486653, 4876529; 486654, 4876499; 486652, 4876472; 486642, 4876455; 486627, 4876441; 486618, 4876441; 486602, 4876442; 486601, 4876435; 486602, 4876406; 486602, 4876397; 486598, 4876393; 486593, 4876396; 486591, 4876407; 486591, 4876417; 486590, 4876426; 486590, 4876435; 486590, 4876443; 486562, 4876457; 486556, 4876492; 486557, 4876500; 486551, 4876505; 486547, 4876506; 486540, 4876510; 486543, 4876524; 486547, 4876537; 486552, 4876545; 486557, 4876550; 486561, 4876557; 486562, 4876564; 486582, 4876581; 486589, 4876597; 486590, 4876602; 486589, 4876609; 486589, 4876621; 486589, 4876635; 486590, 4876653; 486591, 4876659; 486594, 4876667; 486600, 4876669; 486605, 4876666; 486606, 4876654; 486605, 4876640; 486608, 4876631; 486627, 4876636; 486632, 4876635; 486640, 4876635; 486657, 4876628; 486661, 4876606; 486650, 4876579; 486656, 4876557; 486668, 4876600; 486683, 4876621; 486704, 4876623; 486726, 4876604; 486732, 4876587; 486781, 4876558; 486789, 4876539; 486795, 4876512; 486782, 4876491; 486770, 4876484; 486741, 4876473; 486688, 4876472; 486667, 4876485; 486657, 4876501.

(iii) Unit 8C (WD–8C): 487623, 4876823; 487647, 4876820; 487687, 4876814; 487710, 4876811; 487734, 4876809; 487730, 4876793; 487708, 4876778; 487695, 4876766; 487655, 4876763; 487598, 4876773; 487547, 4876776; 487531, 4876778; 487530, 4876798; 487535, 4876810; 487540, 4876843; 487567, 4876831; 487597, 4876828; 487623, 4876823.

(iv) Unit 8D (WD–8D): 485871, 4875038; 485852, 4875045; 485827, 4875053; 485803, 4875059; 485777, 4875068; 485754, 4875087; 485740, 4875098; 485723, 4875099; 485706, 4875097; 485686, 4875096; 485665, 4875097; 485657, 4875098; 485623, 4875117; 485622, 4875126; 485613, 4875129; 485607, 4875147; 485610, 4875167; 485619, 4875168; 485618, 4875173; 485638, 4875182; 485650, 4875199; 485648, 4875223; 485650, 4875241; 485671, 4875264; 485685, 4875291; 485688, 4875304; 485690, 4875382; 485701, 4875417; 485700, 4875429; 485692, 4875447; 485691, 4875459; 485694, 4875478; 485703, 4875488; 485718, 4875497; 485729, 4875509; 485727, 4875518; 485715, 4875537; 485687, 4875543; 485667, 4875543; 485657, 4875556; 485671, 4875567; 485688, 4875570; 485708, 4875571; 485735, 4875571; 485760, 4875576; 485789, 4875586; 485817, 4875614; 485837, 4875642; 485846, 4875674; 485850, 4875691; 485850, 4875952; 485858, 4875959; 485877, 4875965; 485928, 4875973; 486003, 4875982; 486052, 4875993; 486097, 4875994; 486125, 4875998; 486142, 4875995; 486166, 4875994; 486203, 4876000; 486204, 4876005; 486218, 4876012; 486220, 4876026; 486220, 4876036; 486228, 4876038; 486246, 4876113; 486264, 4876125; 486291, 4876126; 486296, 4876141; 486312, 4876132; 486334, 4876130; 486354, 4876130; 486373, 4876128; 486385, 4876125; 486397, 4876116; 486401, 4876077; 486401, 4876062; 486428, 4876063; 486453, 4876049; 486469, 4876031; 486475, 4875999; 486445, 4875922; 486395, 4875920; 486336, 4875909; 486315, 4875912; 486294, 4875885; 486303, 4875877; 486304, 4875848; 486288, 4875827; 486264, 4875816; 486223, 4875817; 486199, 4875842; 486181, 4875854; 486167, 4875850; 486155, 4875847; 486146, 4875854; 486143, 4875870; 486148, 4875885; 486154, 4875898; 486137, 4875916; 486136, 4875925; 486137, 4875941; 486121, 4875943; 486100, 4875945; 486093, 4875941; 486082, 4875939; 486003, 4875714; 485990, 4875696; 485981, 4875684; 485974, 4875676; 485955, 4875666; 485939, 4875656; 485912, 4875647; 485902, 4875639; 485895, 4875620; 485899, 4875606; 485904, 4875594; 485915, 4875575; 485924, 4875559; 485924, 4875543; 485920, 4875526; 485906, 4875516; 485885, 4875499; 485852, 4875477; 485832, 4875461; 485827, 4875446; 485830, 4875423; 485841, 4875400; 485858, 4875375; 485869, 4875364; 485878, 4875349; 485876, 4875339; 485875, 4875309; 485880, 4875299; 485883, 4875283; 485877, 4875269; 485871, 4875255; 485865, 4875234; 485862, 4875210; 485871, 4875203; 485867, 4875194; 485862, 4875177; 485861, 4875157; 485863, 4875143; 485877, 4875132; 485875, 4875121; 485875, 4875112; 485883, 4875101; 485875, 4875077; 485875, 4875069; 485878, 4875055; 485878, 4875045; 485871, 4875038.

(v) Unit 8E (WD–8E): 486432, 4875002; 486464, 4875005; 486499, 4874996; 486540, 4874957; 486543, 4874928; 486523, 4874907; 486495, 4874901; 486485, 4874903; 486475, 4874893; 486454, 4874883; 486401, 4874883; 486379, 4874893; 486365, 4874907; 486367, 4874918; 486360, 4874928; 486354, 4874935; 486350, 4874948; 486349, 4874964; 486343, 4874996; 486343, 4875029; 486329, 4875101; 486327, 4875156; 486327, 4875203; 486318, 4875294; 486333, 4875362; 486336, 4875470; 486335, 4875513; 486347, 4875595; 486355, 4875644; 486368, 4875689; 486398, 4875724; 486417, 4875722; 486421, 4875705; 486417, 4875683; 486415, 4875666; 486419, 4875638; 486409, 4875612; 486394, 4875582; 486392, 4875509; 486398, 4875465; 486402, 4875400; 486404, 4875343; 486397, 4875292; 486397, 4875264; 486406, 4875197; 486408, 4875161; 486409, 4875120; 486413, 4875059; 486417, 4875019; 486419, 4875009; 486432, 4875002.

(vi) **Note:** Map 9 of Unit 8 for *Erigeron decumbens* var. *decumbens* (WD–8) follows:


Map 9, Unit WD-8
Erigeron decumbens var. decumbens
Willamette Daisy (WD)
W 11th Ave
Amazon Creek
A
B
C
W 18th Ave
WD-8
D
E
S Bertelsen Rd
Bailey Hill Rd
Willow Creek
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.2 0.4
Kilometers
0 0.2 0.4
Lane County
N

(14) Unit 9 for *Erigeron decumbens* var. *decumbens* (WD–9), Lane County, Oregon.

(i) Unit 9A (WD–9A): 482376, 4875220; 482431, 4875221; 482407, 4875176; 482419, 4875157; 482433, 4875154; 482454, 4875162; 482478, 4875158; 482496, 4875142; 482509, 4875124; 482504, 4875110; 482515, 4875097; 482526, 4875086; 482525, 4875072; 482519, 4875066; 482529, 4875056; 482532, 4875040; 482545, 4875028; 482556, 4875030; 482568, 4875031; 482626, 4875009; 482629, 4874992; 482636, 4874983; 482629, 4874972; 482632, 4874952; 482640, 4874945; 482635, 4874939; 482635, 4874898; 482653, 4874892; 482671, 4874893; 482682, 4874904; 482700, 4874893; 482716, 4874892; 482739, 4874889; 482756, 4874875; 482773, 4874872; 482781, 4874859; 482772, 4874853; 482752, 4874852; 482749, 4874810; 482762, 4874804; 482762, 4874795; 482751, 4874790; 482747, 4874782; 482759, 4874776; 482769, 4874768; 482792, 4874770; 482822, 4874745; 482818, 4874718; 482833, 4874707; 482853, 4874701; 482870, 4874682; 482880, 4874667; 482898, 4874283; 482886, 4874262; 482866, 4874250; 482850, 4874230; 482840, 4874202; 482843, 4874175; 482848, 4874143; 482831, 4874127; 482819, 4874104; 482811, 4874080; 482772, 4874052; 482735, 4874031; 482728, 4874017; 482725, 4873993; 482715, 4873979; 482701, 4873966; 482371, 4873978; 482338, 4873981; 482305, 4873976; 482243, 4873963; 482227, 4873968; 482236, 4873984; 482296, 4874007; 482308, 4874028; 482365, 4874052; 482381, 4874074; 482409, 4874087; 482432, 4874100; 482429, 4874112; 482412, 4874116; 482401, 4874102; 482384, 4874103; 482373, 4874090; 482362, 4874085; 482359, 4874074; 482339, 4874069; 482328, 4874073; 482322, 4874065; 482312, 4874076; 482315, 4874085; 482329, 4874094; 482351, 4874096; 482461, 4874167; 482445, 4874211; 482441, 4874229; 482438, 4874247; 482451, 4874269; 482449, 4874289; 482435, 4874303; 482448, 4874321; 482466, 4874321; 482473, 4874339; 482483, 4874338; 482508, 4874311; 482509, 4874293; 482534, 4874303; 482586, 4874349; 482591, 4874373; 482598, 4874362; 482616, 4874367; 482620, 4874381; 482609, 4874402; 482608, 4874420; 482600, 4874437; 482599, 4874448; 482609, 4874441; 482618, 4874442; 482628, 4874451; 482631, 4874471; 482608, 4874466; 482613, 4874486; 482623, 4874489; 482629, 4874504; 482625, 4874514; 482626, 4874524; 482639, 4874531; 482636, 4874540; 482631, 4874555; 482640, 4874567; 482622, 4874604; 482625, 4874641; 482591, 4874698; 482570, 4874705; 482567, 4874723; 482563, 4874736; 482537, 4874761; 482538, 4874773; 482524, 4874785; 482506, 4874780; 482473, 4874804; 482429, 4874833; 482376, 4874861; 482376, 4875220.

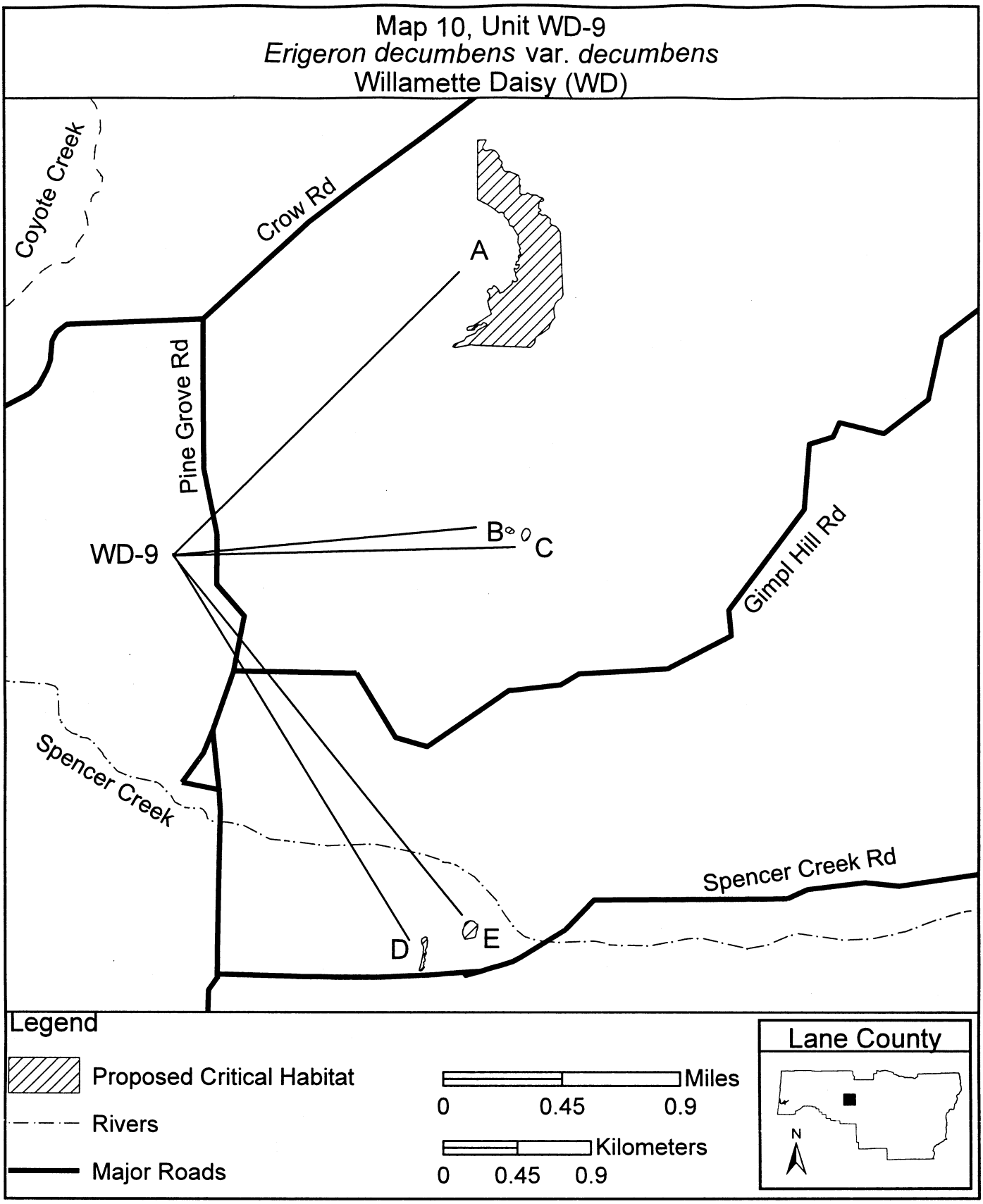
(ii) Unit 9B (WD–9B): 482570, 4872865; 482588, 4872857; 482600, 4872844; 482595, 4872832; 482581, 4872828; 482575, 4872828; 482571, 4872828; 482559, 4872835; 482548, 4872841; 482549, 4872860; 482568, 4872866; 482570, 4872865.

(iii) Unit 9C (WD–9C): 482668, 4872783; 482654, 4872785; 482645, 4872810; 482644, 4872821; 482654, 4872845; 482670, 4872860; 482689, 4872856; 482699, 4872834; 482689, 4872804; 482679, 4872790; 482668, 4872783.

(iv) Unit 9D (WD–9D): 482068, 4870373; 482070, 4870364; 482072, 4870350; 482070, 4870326; 482068, 4870308; 482062, 4870303; 482058, 4870291; 482064, 4870284; 482063, 4870270; 482055, 4870266; 482058, 4870256; 482052, 4870252; 482055, 4870244; 482058, 4870235; 482055, 4870224; 482046, 4870222; 482052, 4870210; 482045, 4870199; 482047, 4870193; 482054, 4870192; 482051, 4870187; 482043, 4870174; 482032, 4870168; 482021, 4870170; 482023, 4870180; 482031, 4870210; 482044, 4870268; 482047, 4870306; 482045, 4870320; 482038, 4870333; 482034, 4870350; 482039, 4870362; 482049, 4870370; 482059, 4870374; 482068, 4870373.

(v) Unit 9E (WD–9E): 482368, 4870408; 482366, 4870391; 482362, 4870374; 482349, 4870369; 482332, 4870366; 482315, 4870363; 482297, 4870361; 482292, 4870377; 482285, 4870392; 482285, 4870408; 482285, 4870413; 482292, 4870429; 482296, 4870440; 482299, 4870452; 482301, 4870459; 482308, 4870465; 482324, 4870472; 482342, 4870473; 482356, 4870468; 482361, 4870461; 482374, 4870450; 482377, 4870438; 482373, 4870421; 482368, 4870408.

(vi) **Note:** Map 10 of Unit 9 for *Erigeron decumbens* var. *decumbens* (WD–9) follows:


Map 10, Unit WD-9
Erigeron decumbens var. decumbens
Willamette Daisy (WD)
Coyote Creek
Crow Rd
A
Pine Grove Rd
B
C
WD-9
Gimpl Hill Rd
Spencer Creek
Spencer Creek Rd
D
E
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.45 0.9
Kilometers
0 0.45 0.9
Lane County
N

* * * * *

Family Fabaceae: *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine).

(1) Critical habitat units are depicted for Benton, Douglas, Lane, Polk, and Yamhill Counties, Oregon, and Lewis County, Washington on the maps below.

(2) The primary constituent elements of critical habitat for the *Lupinus sulphureus* ssp. *kincaidii* are the habitat components that provide:

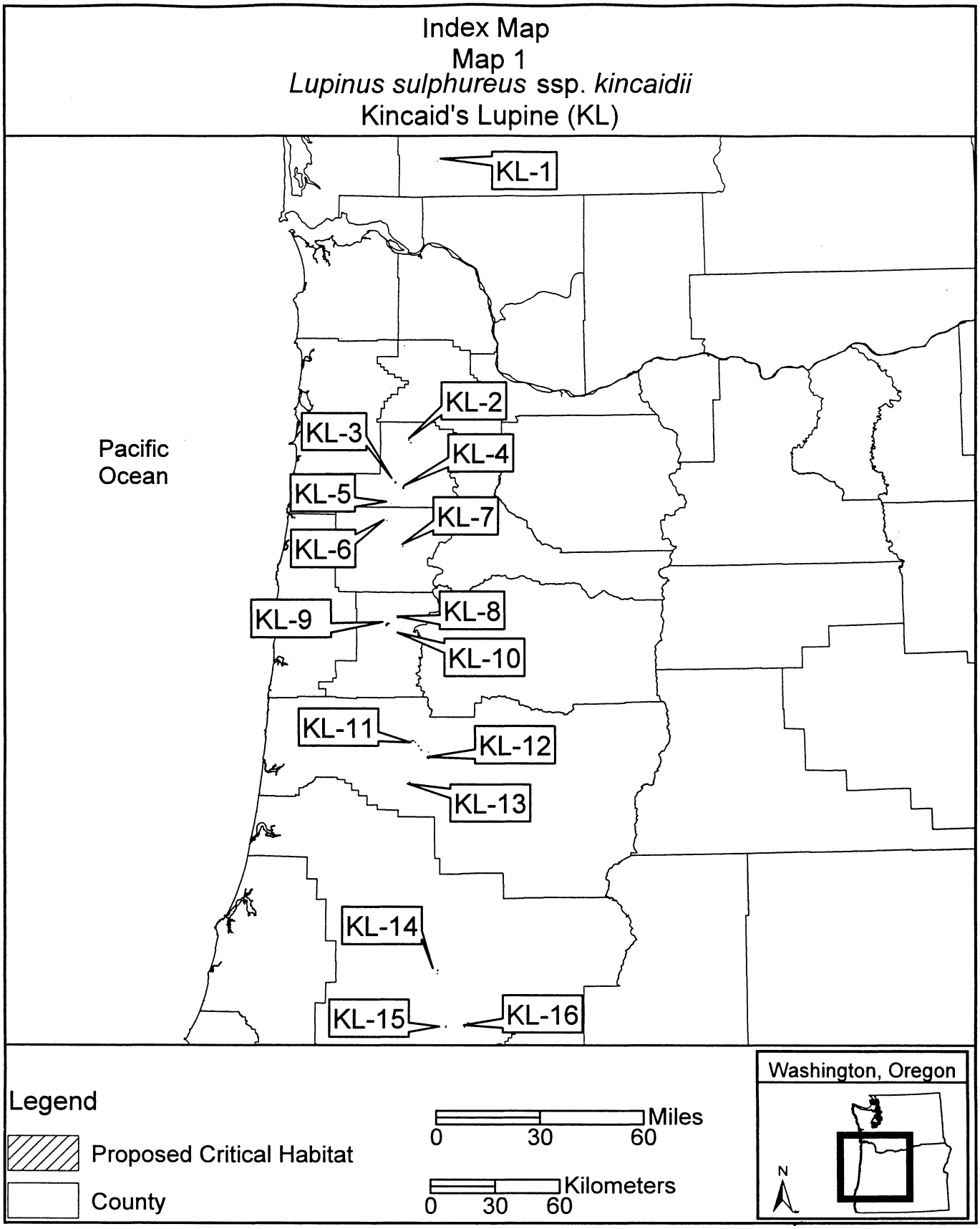
(i) Early seral upland prairie, oak savanna habitat with a mosaic of low growing grasses, forbs, and spaces to establish seedlings or new vegetative growth, with an absence of dense canopy vegetation providing sunlight for individual and population growth and reproduction and with undisturbed subsoils and proper moisture and protection from competitive invasive species.

(ii) The presence of insect outcrossing pollinators, such as *Bombus mixtus* and *B. californicus*, with unrestricted movement between existing lupine patches, critical for successful lupine reproduction.

(3) Critical habitat does not include humanmade structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(4) Critical habitat units are described below. Data layers defining map units were created using USGS 2000 Digital Ortho Quads 24,000 in projection Universal Transverse Mercator (UTM) zone 10, North American Datum (NAD) 27.

(5) **Note:** Map 1 (Index map for *Lupinus sulphureus* ssp. *kincaidii*) follows:

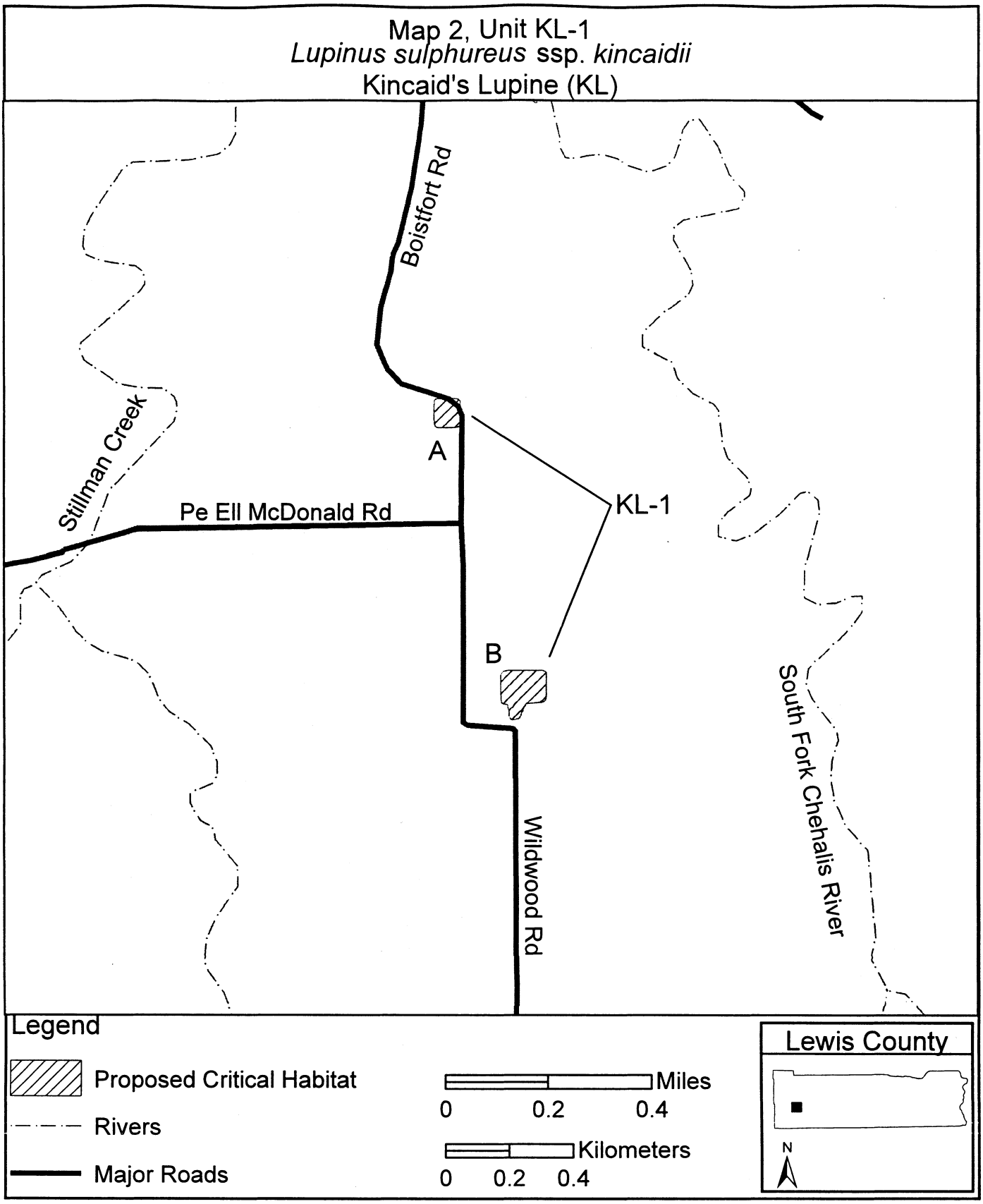

Index Map
Map 1
Lupinus sulphureus ssp. kincaidii
Kincaid's Lupine (KL)
KL-1
KL-2
KL-3
KL-4
KL-5
KL-6
KL-7
KL-8
KL-9
KL-10
KL-11
KL-12
KL-13
KL-14
KL-15
KL-16
Pacific Ocean
Legend
Proposed Critical Habitat
County
Miles
0 30 60
Kilometers
0 30 60
Washington, Oregon
N

(6) Unit 1 for *Lupinus sulphureus* ssp. *kincaidii* (KL–1), Lewis County, Washington.

(i) Unit 1A (KL–1A): 489842, 5153030; 489840, 5153036; 489840, 5153046; 489840, 5153098; 489840, 5153111; 489843, 5153115; 489848, 5153116; 489861, 5153117; 489902, 5153117; 489912, 5153117; 489917, 5153115; 489920, 5153110; 489922, 5153099; 489922, 5153044; 489920, 5153033; 489919, 5153028; 489913, 5153025; 489900, 5153024; 489859, 5153024; 489849, 5153025; 489842, 5153030.

(ii) Unit 1B (KL–1B): 490192, 5152263; 490192, 5152189; 490188, 5152176; 490177, 5152171; 490165, 5152171; 490131, 5152168; 490124, 5152161; 490121, 5152160; 490119, 5152148; 490115, 5152144; 490114, 5152137; 490109, 5152126; 490102, 5152121; 490098, 5152121; 490084, 5152118; 490080, 5152122; 490076, 5152130; 490076, 5152146; 490073, 5152152; 490073, 5152156; 490072, 5152164; 490056, 5152167; 490051, 5152171; 490050, 5152178; 490050, 5152196; 490050, 5152257; 490056, 5152268; 490072, 5152271; 490180, 5152271; 490189, 5152268; 490192, 5152263.

(iii) **Note:** Map 2 of Unit 1 of *Lupinus sulphureus* ssp. *kincaidii* (KL–1) follows:

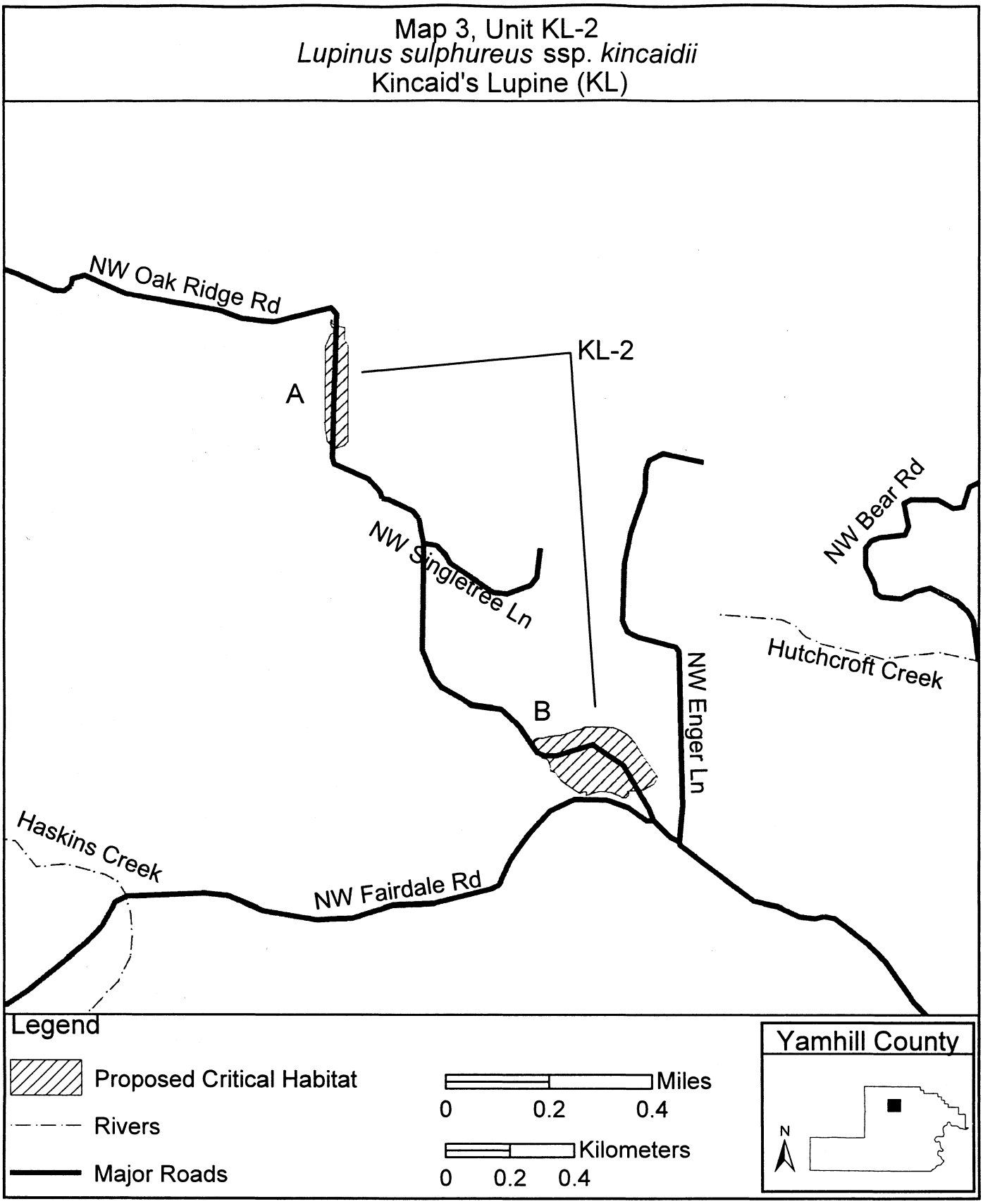

Map 2, Unit KL-1
Lupinus sulphureus ssp. kincaidii
Kincaid's Lupine (KL)
Boistfort Rd
Stillman Creek
Pe Ell McDonald Rd
A
KL-1
B
South Fork Chehalis River
Wildwood Rd
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.2 0.4
Kilometers
0 0.2 0.4
Lewis County
N

(7) Unit 2 for *Lupinus sulphureus* ssp. *kincaidii* (KL–2) Yamhill County, Oregon.

(i) Unit 2A (KL–2A): 477039, 5022576; 477038, 5022585; 477039, 5022591; 477039, 5022824; 477055, 5022862; 477073, 5022873; 477056, 5022893; 477056, 5022901; 477057, 5022907; 477061, 5022907; 477060, 5022896; 477081, 5022888; 477101, 5022884; 477099, 5022848; 477110, 5022829; 477111, 5022528; 477098, 5022513; 477069, 5022504; 477067, 5022498; 477069, 5022493; 477070, 5022487; 477067, 5022487; 477065, 5022493; 477063, 5022498; 477063, 5022510; 477046, 5022526; 477039, 5022566; 477039, 5022576.

(ii) Unit 2B (KL–2B): 477695, 5021589; 477690, 5021600; 477691, 5021601; 477707, 5021609; 477719, 5021607; 477739, 5021612; 477777, 5021616; 477823, 5021631; 477839, 5021635; 477849, 5021641; 477867, 5021641; 477876, 5021643; 477881, 5021641; 477902, 5021642; 477941, 5021640; 477957, 5021634; 477983, 5021620; 478008, 5021592; 478031, 5021554; 478078, 5021484; 478068, 5021464; 478035, 5021445; 477996, 5021442; 477983, 5021440; 477989, 5021435; 477986, 5021427; 477979, 5021419; 477968, 5021420; 477956, 5021427; 477931, 5021437; 477898, 5021440; 477878, 5021434; 477854, 5021427; 477857, 5021435; 477855, 5021439; 477846, 5021438; 477836, 5021433; 477812, 5021449; 477790, 5021465; 477773, 5021478; 477759, 5021499; 477745, 5021504; 477743, 5021519; 477744, 5021519; 477737, 5021537; 477732, 5021541; 477731, 5021541; 477731, 5021541; 477731, 5021541; 477731, 5021541; 477730, 5021541; 477730, 5021541; 477729, 5021541; 477727, 5021541; 477727, 5021541; 477727, 5021541; 477727, 5021541; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477726, 5021542; 477725, 5021543; 477724, 5021543; 477724, 5021543; 477724, 5021543; 477724, 5021543; 477723, 5021543; 477723, 5021543; 477723, 5021543; 477722, 5021543; 477722, 5021544; 477721, 5021544; 477720, 5021543; 477720, 5021543; 477720, 5021543; 477720, 5021543; 477720, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477719, 5021543; 477718, 5021543; 477718, 5021543; 477718, 5021543; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021544; 477718, 5021545; 477718, 5021545; 477718, 5021545; 477718, 5021545; 477718, 5021545; 477718, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477719, 5021545; 477720, 5021545; 477720, 5021545; 477720, 5021545; 477721, 5021546; 477721, 5021546; 477721, 5021546; 477721, 5021546; 477721, 5021546; 477721, 5021546; 477722, 5021546; 477722, 5021546; 477722, 5021546; 477722, 5021546; 477722, 5021546; 477723, 5021545; 477723, 5021545; 477723, 5021545; 477723, 5021545; 477723, 5021545; 477724, 5021545; 477725, 5021544; 477725, 5021544; 477725, 5021544; 477725, 5021544; 477726, 5021544; 477726, 5021544; 477726, 5021544; 477726, 5021544; 477726, 5021544; 477726, 5021544; 477727, 5021543; 477728, 5021543; 477729, 5021543; 477715, 5021554; 477698, 5021582; 477695, 5021586; 477695, 5021589.

(iii) **Note:** Map 3 of Unit 2 for *Lupinus sulphureus* ssp. *kincaidii* (KL–2) follows:


Map 3, Unit KL-2
Lupinus sulphureus ssp. kincaidii
Kincaid's Lupine (KL)
NW Oak Ridge Rd
KL-2
A
NW Singletree Ln
NW Bear Rd
Hutchcroft Creek
NW Enger Ln
B
Haskins Creek
NW Fairdale Rd
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.2 0.4
Kilometers
0 0.2 0.4
Yamhill County
N

(8) Units 3 and 4 for *Lupinus sulphureus* ssp. *kincaidii* (KL–3 and KL–4), Yamhill County, Oregon.

(i) Unit 3 (KL–3): 470725, 5003387; 470725, 5003399; 470728, 5003400; 470728, 5003406; 470733, 5003407; 470738, 5003441; 470741, 5003444; 470749, 5003447; 470755, 5003446; 470764, 5003444; 470769, 5003441; 470775, 5003430; 470778, 5003422; 470780, 5003416; 470782, 5003411; 470787, 5003400; 470790, 5003393; 470794, 5003387; 470797, 5003383; 470810, 5003372; 470817, 5003367; 470829, 5003362; 470836, 5003356; 470841, 5003352; 470852, 5003349; 470856, 5003345; 470858, 5003343; 470869, 5003337; 470878, 5003335; 470891, 5003328; 470895, 5003325; 470901, 5003320; 470914, 5003313; 470925, 5003301; 470930, 5003295; 470937, 5003286; 470945, 5003282; 470948, 5003277; 470948, 5003271; 470948, 5003260; 470951, 5003247; 470955, 5003235; 470959, 5003231; 470965, 5003226; 470972, 5003226; 470984, 5003224; 470992, 5003223; 471004, 5003220; 471012, 5003218; 471016, 5003215; 471018, 5003209; 471014, 5003202; 471011, 5003200; 471006, 5003198; 470998, 5003191; 470991, 5003187; 470988, 5003186; 470981, 5003180; 470977, 5003176; 470973, 5003168; 470970, 5003165; 470968, 5003159; 470968, 5003151; 470968, 5003132; 470968, 5003123; 470967, 5003109; 470965, 5003099; 470962, 5003090; 470961, 5003075; 470965, 5003070; 470966, 5003065; 470967, 5003055; 470965, 5003048; 470969, 5003041; 470974, 5003036; 470979, 5003036; 470984, 5003035; 470986, 5003035; 470990, 5003032; 470995, 5003027; 470998, 5003022; 470998, 5003015; 470998, 5003010; 470994, 5003007; 470988, 5003006; 470977, 5003006; 470973, 5003006; 470963, 5003004; 470957, 5003001; 470949, 5002996; 470947, 5002994; 470945, 5002987; 470944, 5002981; 470946, 5002976; 470949, 5002967; 470958, 5002964; 470965, 5002964; 470973, 5002962; 470981, 5002958; 470988, 5002955; 470994, 5002951; 470999, 5002946; 471004, 5002937; 471005, 5002932; 471010, 5002924; 471012, 5002918; 471010, 5002913; 471011, 5002902; 471003, 5002893; 470992, 5002886; 470982, 5002892; 470966, 5002893; 470956, 5002901; 470945, 5002909; 470932, 5002914; 470925, 5002911; 470914, 5002904; 470905, 5002901; 470893, 5002900; 470876, 5002901; 470868, 5002895; 470867, 5002887; 470879, 5002867; 470888, 5002866; 470935, 5002861; 470970, 5002859; 470988, 5002861; 470991, 5002853; 470998, 5002837; 471002, 5002828; 471012, 5002821; 471016, 5002816; 471015, 5002796; 471017, 5002785; 471017, 5002776; 471016, 5002766; 471015, 5002751; 471014, 5002740; 471012, 5002737; 471008, 5002734; 470998, 5002731; 470988, 5002734; 470981, 5002737; 470975, 5002739; 470967, 5002744; 470959, 5002745; 470951, 5002747; 470943, 5002747; 470929, 5002745; 470924, 5002744; 470917, 5002740; 470908, 5002741; 470894, 5002743; 470884, 5002741; 470878, 5002739; 470871, 5002737; 470865, 5002735; 470861, 5002735; 470853, 5002735; 470843, 5002736; 470834, 5002737; 470826, 5002742; 470819, 5002745; 470814, 5002751; 470811, 5002758; 470811, 5002764; 470809, 5002774; 470805, 5002784; 470801, 5002791; 470797, 5002795; 470787, 5002802; 470780, 5002802; 470772, 5002802; 470760, 5002805; 470752, 5002811; 470750, 5002818; 470747, 5002830; 470746, 5002840; 470744, 5002861; 470743, 5002874; 470740, 5002886; 470738, 5002896; 470735, 5002904; 470731, 5002910; 470729, 5002911; 470716, 5002892; 470717, 5002872; 470704, 5002848; 470692, 5002827; 470696, 5002824; 470691, 5002816; 470690, 5002804; 470692, 5002800; 470703, 5002799; 470698, 5002794; 470700, 5002783; 470695, 5002776; 470691, 5002769; 470690, 5002762; 470695, 5002753; 470682, 5002753; 470682, 5002723; 470692, 5002723; 470689, 5002717; 470691, 5002709; 470694, 5002702; 470684, 5002700; 470675, 5002699; 470665, 5002704; 470657, 5002701; 470651, 5002704; 470645, 5002701; 470640, 5002694; 470623, 5002696; 470617, 5002697; 470608, 5002697; 470604, 5002707; 470589, 5002716; 470582, 5002715; 470580, 5002725; 470564, 5002726; 470563, 5002707; 470555, 5002695; 470553, 5002676; 470548, 5002670; 470553, 5002660; 470562, 5002655; 470562, 5002646; 470557, 5002635; 470564, 5002625; 470557, 5002608; 470514, 5002689; 470514, 5002732; 470561, 5002844; 470604, 5002950; 470685, 5003149; 470688, 5003164; 470693, 5003185; 470725, 5003387.

(ii) Unit 4A (KL–4A): 474339, 5000068; 474325, 5000064; 474320, 5000070; 474312, 5000070; 474311, 5000064; 474300, 5000057; 474282, 5000050; 474270, 5000046; 474267, 5000055; 474260, 5000056; 474256, 5000051; 474251, 5000055; 474247, 5000059; 474237, 5000061; 474230, 5000068; 474230, 5000079; 474229, 5000089; 474231, 5000094; 474229, 5000099; 474231, 5000108; 474231, 5000123; 474230, 5000155; 474233, 5000175; 474238, 5000186; 474234, 5000193; 474241, 5000196; 474248, 5000197; 474251, 5000208; 474251, 5000218; 474246, 5000234; 474238, 5000244; 474224, 5000261; 474211, 5000273; 474199, 5000278; 474193, 5000286; 474182, 5000290; 474176, 5000294; 474170, 5000289; 474150, 5000285; 474143, 5000280; 474133, 5000279; 474125, 5000281; 474118, 5000291; 474115, 5000301; 474109, 5000298; 474108, 5000308; 474108, 5000316; 474105, 5000328; 474097, 5000332; 474086, 5000333; 474076, 5000332; 474062, 5000328; 474051, 5000331; 474041, 5000341; 474043, 5000346; 474051, 5000352; 474050, 5000364; 474043, 5000376; 474038, 5000378; 474032, 5000381; 474025, 5000387; 474029, 5000391; 474042, 5000393; 474043, 5000388; 474049, 5000383; 474055, 5000383; 474060, 5000383; 474066, 5000376; 474067, 5000368; 474072, 5000363; 474077, 5000366; 474084, 5000367; 474088, 5000361; 474091, 5000357; 474101, 5000355; 474106, 5000351; 474117, 5000352; 474121, 5000348; 474128, 5000345; 474141, 5000347; 474152, 5000345; 474165, 5000349; 474172, 5000355; 474173, 5000362; 474171, 5000374; 474166, 5000381; 474155, 5000386; 474146, 5000393; 474140, 5000404; 474136, 5000397; 474133, 5000406; 474124, 5000402; 474126, 5000408; 474125, 5000416; 474121, 5000425; 474107, 5000436; 474119, 5000434; 474130, 5000434; 474144, 5000431; 474156, 5000425; 474167, 5000419; 474165, 5000431; 474172, 5000438; 474178, 5000454; 474176, 5000465; 474166, 5000478; 474154, 5000489; 474149, 5000497; 474142, 5000500; 474146, 5000512; 474137, 5000519; 474149, 5000520; 474151, 5000527; 474161, 5000515; 474167, 5000518; 474177, 5000509; 474188, 5000505; 474196, 5000515; 474198, 5000525; 474196, 5000538; 474186, 5000546; 474177, 5000555; 474161, 5000569; 474174, 5000565; 474186, 5000565; 474191, 5000577; 474193, 5000588; 474196, 5000603; 474200, 5000592; 474212, 5000579; 474214, 5000572; 474217, 5000571; 474228, 5000577; 474233, 5000580; 474243, 5000578; 474248, 5000583; 474252, 5000589; 474258, 5000586; 474253, 5000580; 474251, 5000569; 474250, 5000540; 474265, 5000528; 474280, 5000540; 474281, 5000546; 474284, 5000555; 474289, 5000559; 474297, 5000572; 474311, 5000580; 474318, 5000592; 474318, 5000606; 474318, 5000618; 474319, 5000628; 474314, 5000643; 474311, 5000650; 474318, 5000654; 474320, 5000666; 474328, 5000674; 474335, 5000673; 474347, 5000679; 474349, 5000688; 474337,

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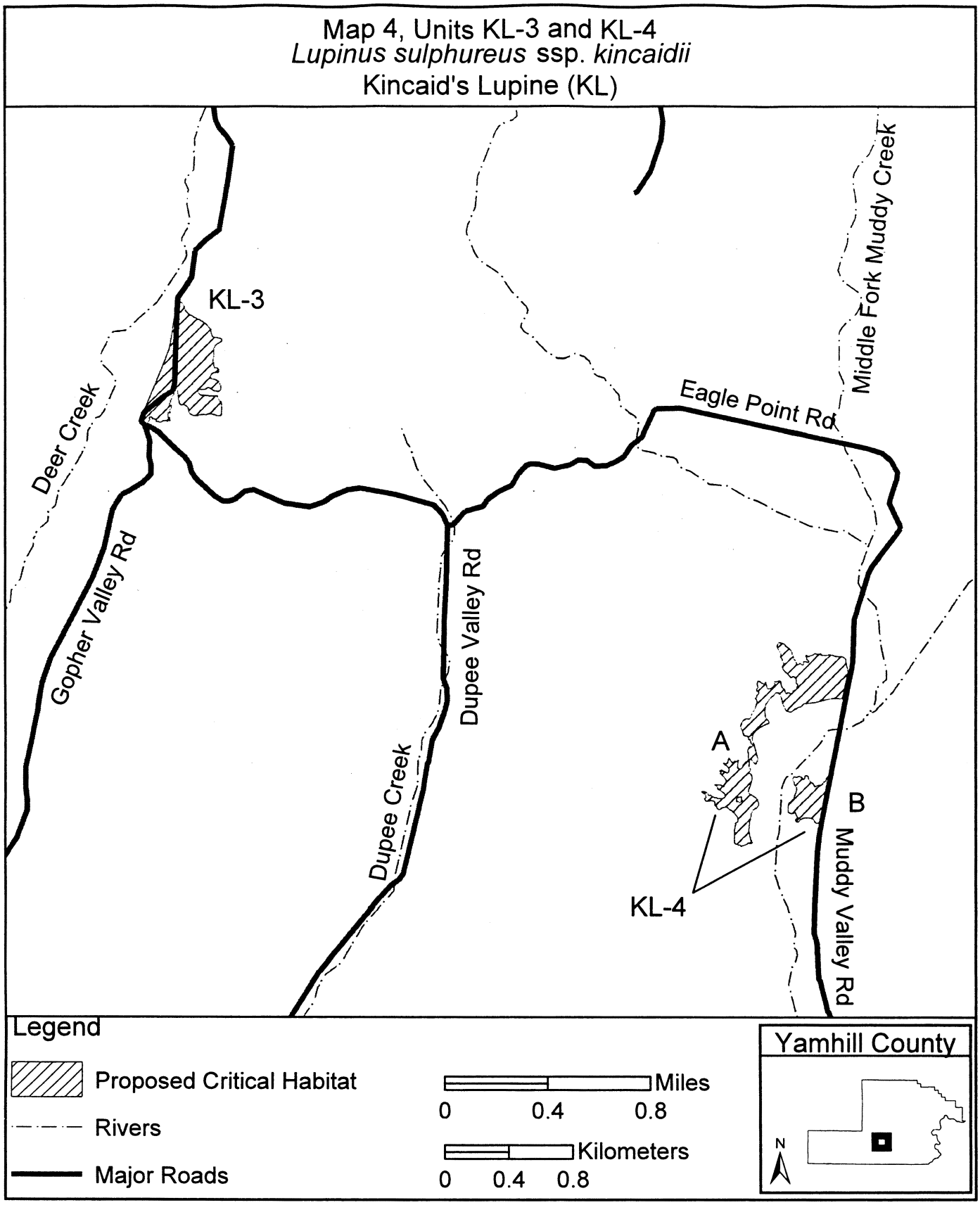
(iii) Unit 4B (KL–4B): 474825, 5000448; 474804, 5000350; 474787, 5000258; 474783, 5000230; 474782, 5000217; 474779, 5000202; 474772, 5000193; 474754, 5000191; 474739, 5000194; 474729, 5000204; 474723, 5000215; 474716, 5000222; 474702, 5000226; 474685, 5000227; 474669, 5000226; 474658, 5000223; 474640, 5000215; 474629, 5000204; 474621, 5000199; 474613, 5000202; 474609, 5000211; 474612, 5000218; 474617, 5000220; 474623, 5000229; 474615, 5000239; 474610, 5000255; 474610, 5000260; 474607, 5000264; 474598, 5000254; 474589, 5000252; 474580, 5000254; 474563, 5000263; 474564, 5000279; 474562, 5000290; 474566, 5000307; 474570, 5000316; 474581, 5000328; 474590, 5000336; 474598, 5000349; 474605, 5000362; 474611, 5000383; 474616, 5000399; 474618, 5000406; 474614, 5000417; 474604, 5000433; 474603, 5000446; 474597, 5000456; 474592, 5000468; 474596, 5000479; 474607, 5000481; 474619, 5000477; 474628, 5000481; 474638, 5000487; 474643, 5000478; 474647, 5000476; 474660, 5000464; 474667, 5000467; 474669, 5000479; 474671, 5000487; 474677, 5000489; 474687, 5000487; 474693, 5000469; 474698, 5000460; 474705, 5000445; 474719, 5000441; 474728, 5000430; 474731, 5000421; 474741, 5000424; 474751, 5000429; 474766, 5000430; 474779, 5000437; 474785, 5000445; 474792, 5000450; 474801, 5000456; 474803, 5000472; 474813, 5000483; 474823, 5000490; 474830, 5000485; 474830, 5000467; 474825, 5000448.

(iv) **Note:** Map 4 of Units 3 and 4 for *Lupinus sulphureus* ssp. *kincaidii* (KL–3 and KL–4) follows:

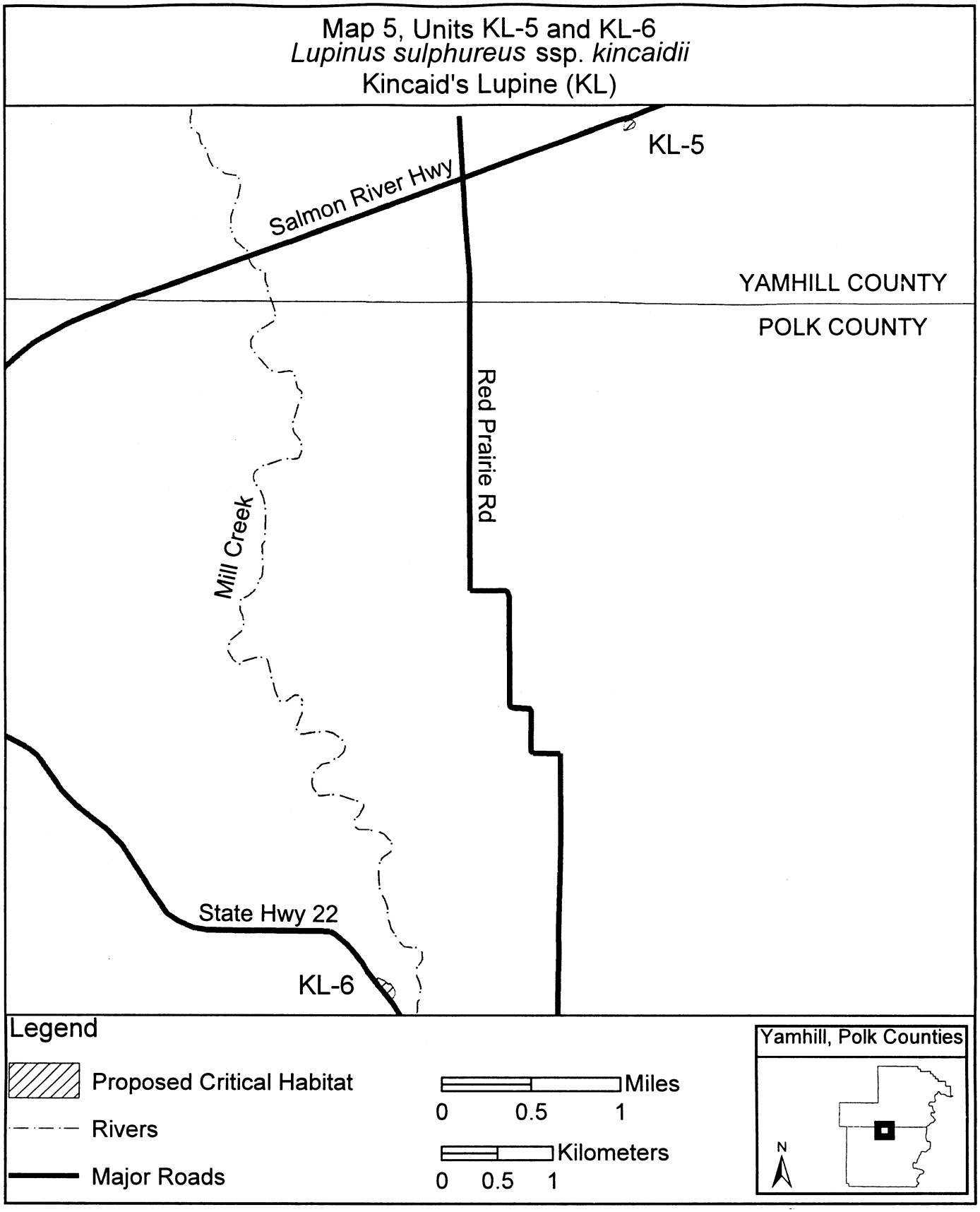

Map 4, Units KL-3 and KL-4
Lupinus sulphureus ssp. kincaidii
Kincaid's Lupine (KL)
KL-3
Deer Creek
Gopher Valley Rd
Dupee Valley Rd
Dupee Creek
Eagle Point Rd
Middle Fork Muddy Creek
A
B
KL-4
Muddy Valley Rd
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.4 0.8
Kilometers
0 0.4 0.8
Yamhill County
N

(9) Units 5 and 6 for *Lupinus sulphureus* ssp. *kincaidii* (KL–5 and KL–6): Yamhill and Polk Counties, Oregon.

(i) Unit 5 (KL–5): 468981, 4992995; 469003, 4992969; 468989, 4992935; 468949, 4992915; 468897, 4992904; 468904, 4992979; 468953, 4992996; 468981, 4992995.

(ii) Unit 6 (KL–6): 466683, 4985320; 466691, 4985320; 466712, 4985309; 466744, 4985295; 466788, 4985264; 466788, 4985266; 466788, 4985267; 466788, 4985268; 466789, 4985269; 466789, 4985270; 466790, 4985271; 466791, 4985272; 466792, 4985273; 466793, 4985273; 466795, 4985273; 466796, 4985274; 466797, 4985273; 466798, 4985273; 466800, 4985272; 466800, 4985272; 466801, 4985271; 466802, 4985270; 466802, 4985269; 466803, 4985267; 466803, 4985266; 466803, 4985265; 466802, 4985264; 466805, 4985263; 466814, 4985246; 466828, 4985234; 466834, 4985222; 466841, 4985196; 466839, 4985170; 466828, 4985145; 466814, 4985129; 466805, 4985129; 466783, 4985143; 466767, 4985178; 466742, 4985216; 466725, 4985214; 466725, 4985212; 466721, 4985211; 466718, 4985210; 466715, 4985211; 466711, 4985212; 466707, 4985213; 466700, 4985220; 466694, 4985237; 466694, 4985239; 466694, 4985241; 466696, 4985243; 466710, 4985258; 466681, 4985295; 466683, 4985320.

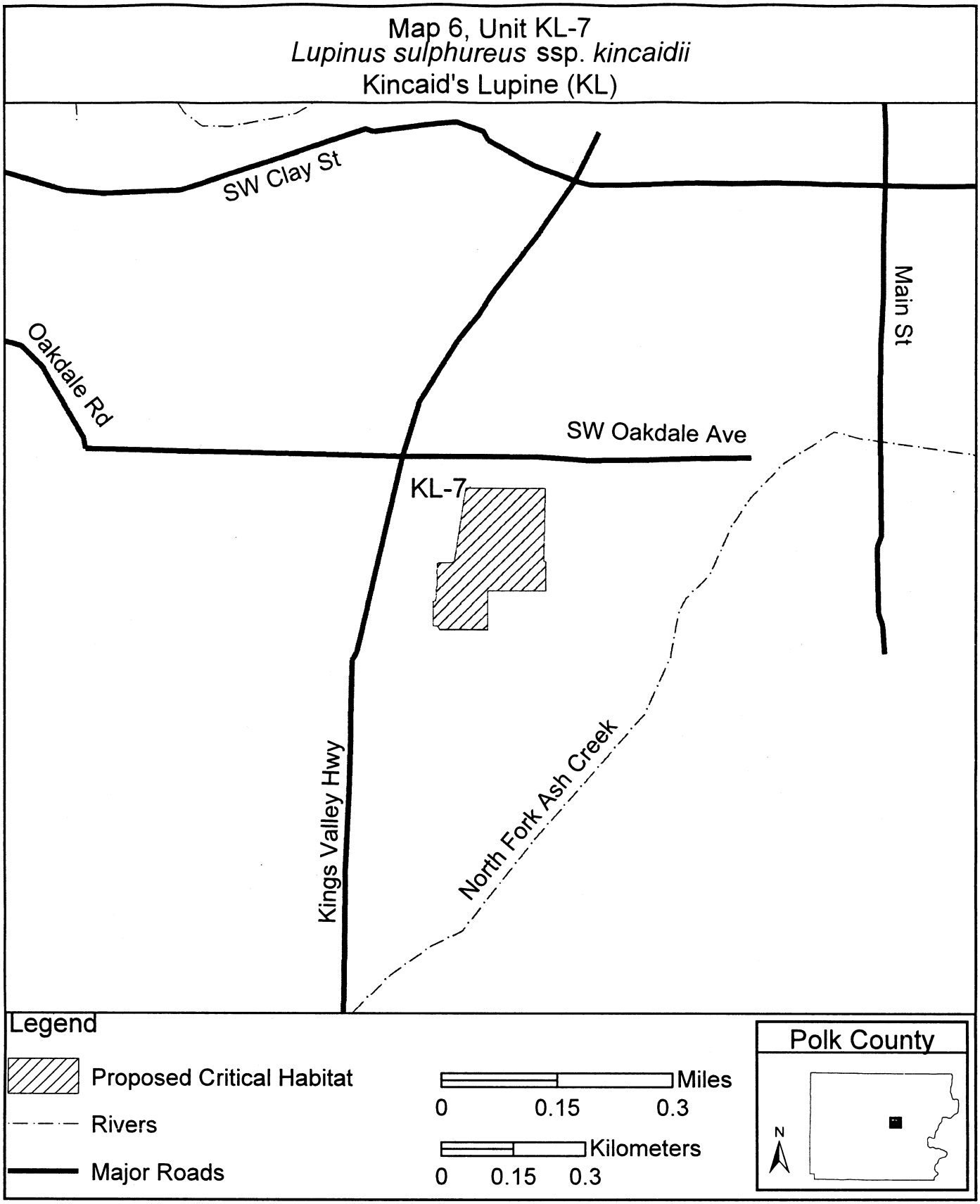
(iii) **Note:** Map 5 of Units 5 and 6 for *Lupinus sulphureus* ssp. *kincaidii* (KL–5 and KL–6) follows:


Map 5, Units KL-5 and KL-6
Lupinus sulphureus ssp. kincaidii
Kincaid's Lupine (KL)
KL-5
Salmon River Hwy
YAMHILL COUNTY
POLK COUNTY
Red Prairie Rd
Mill Creek
State Hwy 22
KL-6
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.5 1
Kilometers
0 0.5 1
Yamhill, Polk Counties
N

(10) Unit 7 for *Lupinus sulphureus* ssp. *kincaidii* (KL–7), Polk County, Oregon.

(i) Unit 7 (KL–7): 474107, 4973322; 474272, 4973321; 474269, 4973168; 474273, 4973168; 474274, 4973107; 474153, 4973107; 474153, 4973026; 474053, 4973026; 474051, 4973029; 474049, 4973032; 474047, 4973034; 474042, 4973034; 474039, 4973035; 474038, 4973084; 474044, 4973086; 474045, 4973092; 474045, 4973097; 474045, 4973104; 474045, 4973109; 474046, 4973116; 474047, 4973121; 474046, 4973128; 474047, 4973134; 474047, 4973139; 474046, 4973146; 474047, 4973152; 474048, 4973154; 474047, 4973158; 474048, 4973164; 474049, 4973164; 474052, 4973165; 474054, 4973165; 474061, 4973165; 474067, 4973165; 474074, 4973165; 474079, 4973166; 474083, 4973168; 474098, 4973263; 474107, 4973322.

(ii) **Note:** Map 6 of Unit 7 for *Lupinus sulphureus* ssp. *kincaidii* (Unit KL–7) follows:


Map 6, Unit KL-7
Lupinus sulphureus ssp. kincaidii
Kincaid's Lupine (KL)
SW Clay St
Main St
Oakdale Rd
SW Oakdale Ave
KL-7
Kings Valley Hwy
North Fork Ash Creek
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.15 0.3
Kilometers
0 0.15 0.3
Polk County
N

(11) Units 8, 9, and 10 for *Lupinus sulphureus* ssp. *kincaidii* (KL–8, KL–9, and KL–10), Benton County, Oregon.

(i) Unit 8 (KL–8): 471794, 4940353; 471803, 4940362; 471803, 4940364; 471807, 4940366; 471867, 4940431; 471952, 4940515; 471990, 4940567; 471991, 4940575; 472013, 4940637; 472052, 4940649; 472060, 4940661; 472124, 4940639; 472167, 4940615; 472226, 4940578; 472270, 4940565; 472318, 4940556; 472350, 4940543; 472373, 4940518; 472375, 4940513; 472419, 4940445; 472464, 4940349; 472490, 4940294; 472502, 4940201; 472490, 4940147; 472448, 4940135; 472366, 4940183; 472338, 4940288; 472332, 4940335; 472330, 4940336; 472301, 4940344; 472299, 4940360; 472299, 4940361; 472311, 4940365; 472327, 4940351; 472329, 4940349; 472327, 4940366; 472309, 4940399; 472291, 4940429; 472280, 4940441; 472273, 4940443; 472251, 4940425; 472164, 4940437; 472080, 4940413; 472057, 4940400; 472040, 4940379; 471998, 4940328; 471963, 4940293; 471939, 4940249; 471909, 4940193; 471945, 4940145; 471976, 4940150; 472017, 4940142; 472058, 4940114; 472066, 4940057; 472034, 4940006; 472007, 4939996; 471985, 4939977; 471922, 4939971; 471868, 4939977; 471860, 4939985; 471845, 4939987; 471821, 4940044; 471834, 4940085; 471856, 4940107; 471841, 4940161; 471831, 4940177; 471814, 4940212; 471809, 4940231; 471801, 4940263; 471801, 4940267; 471798, 4940271; 471796, 4940322; 471796, 4940326; 471794, 4940353.

(ii) Unit 9 (KL–9): 466212, 4936805; 466300, 4937032; 466287, 4937052; 466323, 4937130; 466333, 4937177; 466358, 4937200; 466399, 4937197; 466435, 4937166; 466474, 4937166; 466507, 4937183; 466535, 4937202; 466526, 4937241; 466535, 4937296; 466551, 4937319; 466551, 4937357; 466565, 4937410; 466585, 4937563; 466593, 4937638; 466591, 4937695; 466625, 4937631; 466674, 4937594; 466760, 4937602; 466882, 4937577; 467014, 4937595; 467086, 4937629; 467119, 4937611; 467139, 4937584; 467170, 4937577; 467213, 4937581; 467243, 4937581; 467261, 4937580; 467254, 4937677; 467266, 4937691; 467366, 4937691; 467412, 4937682; 467490, 4937685; 467515, 4937675; 467572, 4937678; 467589, 4937696; 467627, 4937704; 467636, 4937689; 467688, 4937700; 467711, 4937689; 467746, 4937686; 467779, 4937688; 467818, 4937693; 467827, 4937680; 467840, 4937644; 467841, 4937623; 467850, 4937505; 467871, 4937478; 467896, 4937429; 467889, 4937406; 467889, 4937384; 467879, 4937361; 467844, 4937354; 467717, 4937356; 467525, 4937365; 467217, 4937374; 467186, 4937383; 467176, 4937377; 467131, 4937381; 467066, 4937390; 467055, 4937379; 467009, 4937375; 466961, 4937383; 466943, 4937372; 466915, 4937384; 466886, 4937383; 466860, 4937394; 466841, 4937397; 466819, 4937390; 466783, 4937402; 466746, 4937392; 466750, 4937361; 466745, 4937336; 466728, 4937337; 466713, 4937310; 466667, 4937300; 466654, 4937264; 466659, 4937213; 466686, 4937132; 466701, 4937090; 466710, 4937037; 466703, 4937033; 466705, 4937013; 466705, 4936980; 466695, 4936940; 466737, 4936909; 466754, 4936894; 466765, 4936890; 466774, 4936892; 466781, 4936889; 466792, 4936887; 466800, 4936876; 466815, 4936875; 466824, 4936874; 466838, 4936877; 466842, 4936872; 466851, 4936877; 466857, 4936882; 466861, 4936883; 466872, 4936889; 466877, 4936885; 466884, 4936887; 466895, 4936893; 466892, 4936889; 466901, 4936896; 466913, 4936895; 466913, 4936889; 466920, 4936887; 466927, 4936898; 466932, 4936904; 466940, 4936901; 466948, 4936904; 466959, 4936899; 466969, 4936898; 466981, 4936893; 466985, 4936888; 467005, 4936887; 467030, 4936880; 467052, 4936868; 467063, 4936866; 467075, 4936865; 467076, 4936855; 467067, 4936845; 467057, 4936839; 467046, 4936837; 467040, 4936826; 467030, 4936813; 467021, 4936803; 466999, 4936797; 466973, 4936803; 466960, 4936802; 466955, 4936809; 466949, 4936805; 466918, 4936796; 466904, 4936797; 466896, 4936796; 466889, 4936799; 466884, 4936801; 466876, 4936798; 466874, 4936792; 466872, 4936786; 466865, 4936780; 466862, 4936770; 466862, 4936760; 466854, 4936755; 466848, 4936746; 466843, 4936742; 466838, 4936745; 466834, 4936739; 466824, 4936736; 466820, 4936740; 466811, 4936732; 466804, 4936734; 466791, 4936731; 466776, 4936715; 466773, 4936720; 466768, 4936729; 466757, 4936721; 466742, 4936716; 466720, 4936701; 466693, 4936684; 466671, 4936697; 466657, 4936704; 466649, 4936694; 466638, 4936678; 466620, 4936678; 466610, 4936673; 466603, 4936647; 466602, 4936636; 466595, 4936607; 466596, 4936588; 466601, 4936580; 466605, 4936565; 466605, 4936541; 466601, 4936533; 466592, 4936526; 466585, 4936520; 466579, 4936519; 466575, 4936513; 466568, 4936511; 466566, 4936521; 466562, 4936523; 466557, 4936519; 466551, 4936519; 466546, 4936513; 466549, 4936503; 466542, 4936501; 466540, 4936480; 466535, 4936478; 466543, 4936465; 466541, 4936428; 466536, 4936393; 466542, 4936385; 466572, 4936390; 466591, 4936391; 466607, 4936394; 466634, 4936388; 466664, 4936370; 466683, 4936339; 466699, 4936304; 466689, 4936262; 466670, 4936254; 466609, 4936229; 466559, 4936229; 466532, 4936268; 466529, 4936293; 466509, 4936312; 466495, 4936361; 466486, 4936407; 466488, 4936539; 466456, 4936590; 466218, 4936728; 466212, 4936805.

(iii) Unit 12 (KL–10): 471741, 4933496; 471741, 4933497; 471742, 4933498; 471743, 4933500; 471743, 4933501; 471743, 4933503; 471744, 4933505; 471744, 4933506; 471745, 4933508; 471746, 4933510; 471747, 4933511; 471748, 4933513; 471749, 4933515; 471749, 4933515; 471750, 4933517; 471751, 4933518; 471751, 4933519; 471752, 4933521; 471753, 4933523; 471754, 4933524; 471755, 4933525; 471756, 4933527; 471756, 4933528; 471757, 4933529; 471758, 4933531; 471760, 4933532; 471761, 4933534; 471762, 4933535; 471763, 4933537; 471764, 4933538; 471765, 4933539; 471766, 4933540; 471768, 4933542; 471769, 4933543; 471769, 4933544; 471770, 4933545; 471771, 4933547; 471772, 4933548; 471772, 4933548; 471771, 4933547; 471770, 4933547; 471770, 4933546; 471769, 4933545; 471768, 4933545; 471768, 4933544; 471767, 4933544; 471766, 4933544; 471766, 4933545; 471765, 4933545; 471765, 4933546; 471764, 4933547; 471763, 4933548; 471758, 4933550; 471759, 4933551; 471759, 4933551; 471759, 4933551; 471759, 4933551; 471761, 4933552; 471763, 4933553; 471765, 4933554; 471766, 4933555; 471768, 4933556; 471769, 4933558; 471770, 4933560; 471771, 4933562; 471772, 4933564; 471773, 4933566; 471775, 4933567; 471776, 4933569; 471778, 4933570; 471779, 4933572; 471781, 4933574; 471783, 4933575; 471784, 4933577; 471785, 4933577; 471786, 4933578; 471788, 4933580; 471790, 4933581; 471792, 4933583; 471794, 4933584; 471796, 4933586; 471798, 4933587; 471801, 4933589; 471803, 4933591; 471805, 4933592; 471807, 4933594; 471809, 4933595; 471811, 4933597; 471814, 4933598; 471816, 4933600; 471818, 4933601; 471820, 4933602; 471822, 4933604; 471823, 4933604; 471824, 4933605; 471825, 4933606; 471826, 4933607; 471827, 4933607; 471828, 4933607; 471842, 4933603; 471840, 4933603; 471840, 4933603; 471840, 4933603; 471839, 4933602; 471839, 4933602; 471838, 4933601; 471837, 4933600; 471836,

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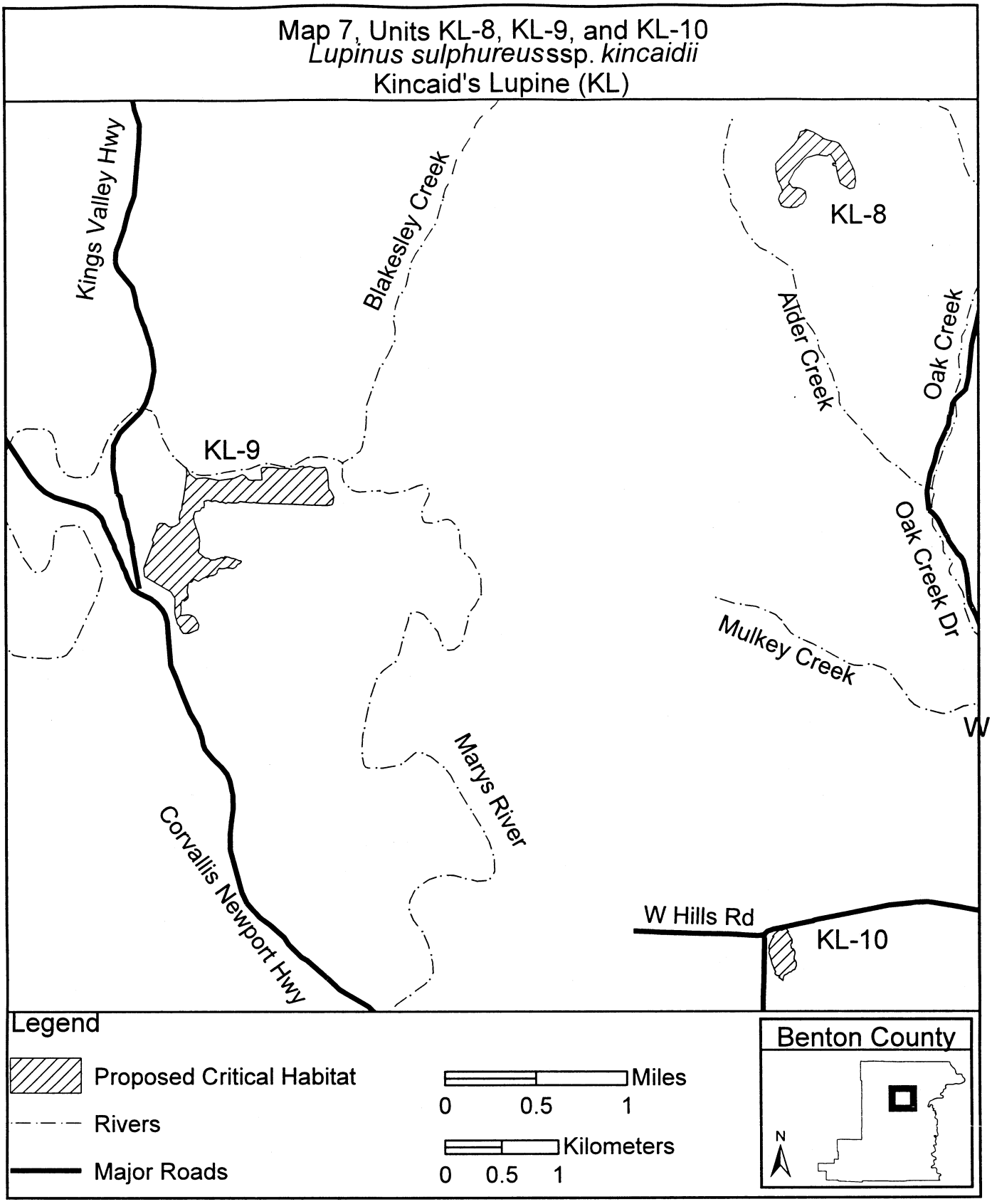
(iv) **Note:** Map 7 of Units 8, 9, and 10 for *Lupinus sulphureus* ssp. *kincaidii* (KL–8, KL–9, and KL–10) follows:


Map 7, Units KL-8, KL-9, and KL-10
Lupinus sulphureus ssp. kincaidii
Kincaid's Lupine (KL)
Kings Valley Hwy
Blakesley Creek
KL-8
Alder Creek
Oak Creek
KL-9
Oak Creek Dr
Mulkey Creek
Marys River
Corvallis Newport Hwy
W Hills Rd
KL-10
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.5 1
Kilometers
0 0.5 1
Benton County
N

(12) Units 11 and 12 for *Lupinus sulphureus* ssp. *kincaidii* (KL–11 and KL–12), Lane County, Oregon.

(i) Unit 11A (KL–11A): 478296, 4882954; 478298, 4882969; 478304, 4882985; 478322, 4883013; 478329, 4883031; 478335, 4883047; 478339, 4883067; 478349, 4883088; 478361, 4883104; 478367, 4883118; 478379, 4883126; 478392, 4883133; 478406, 4883134; 478415, 4883127; 478417, 4883114; 478420, 4883108; 478423, 4883095; 478429, 4883084; 478441, 4883074; 478458, 4883069; 478496, 4883065; 478510, 4883065; 478524, 4883065; 478536, 4883063; 478562, 4883057; 478566, 4883056; 478555, 4883049; 478551, 4883048; 478547, 4883048; 478548, 4883039; 478543, 4883035; 478539, 4883034; 478535, 4883034; 478528, 4883030; 478527, 4883024; 478526, 4883021; 478527, 4883013; 478522, 4883015; 478514, 4883014; 478508, 4883005; 478480, 4882999; 478454, 4882997; 478443, 4882989; 478429, 4882989; 478419, 4882997; 478411, 4882989; 478403, 4882979; 478397, 4882963; 478382, 4882940; 478366, 4882933; 478349, 4882940; 478333, 4882956; 478318, 4882944; 478296, 4882954.

(ii) Unit 11B (KL–11B): 478625, 4882999; 478629, 4883002; 478637, 4883001; 478640, 4883008; 478639, 4883017; 478649, 4883022; 478660, 4883025; 478664, 4883022; 478670, 4883022; 478676, 4883024; 478697, 4883033; 478707, 4883039; 478725, 4883031; 478729, 4883021; 478731, 4883011; 478746, 4883005; 478766, 4883009; 478772, 4883015; 478790, 4883005; 478810, 4883015; 478816, 4883037; 478816, 4883053; 478814, 4883069; 478806, 4883096; 478815, 4883107; 478859, 4883108; 478901, 4883104; 478921, 4883108; 479004, 4883110; 479010, 4883102; 479010, 4883102; 479013, 4882998; 479010, 4882997; 479004, 4882995; 479006, 4882987; 479013, 4882982; 479014, 4882979; 479010, 4882969; 478998, 4882965; 478963, 4882963; 478931, 4882967; 478927, 4882977; 478913, 4882973; 478897, 4882961; 478858, 4882952; 478838, 4882954; 478832, 4882961; 478819, 4882982; 478808, 4882981; 478794, 4882977; 478778, 4882977; 478764, 4882965; 478761, 4882964; 478754, 4882965; 478745, 4882963; 478740, 4882964; 478733, 4882965; 478727, 4882963; 478724, 4882966; 478718, 4882968; 478712, 4882967; 478705, 4882966; 478698, 4882964; 478695, 4882965; 478690, 4882966; 478681, 4882963; 478663, 4882963; 478648, 4882961; 478642, 4882963; 478630, 4882964; 478624, 4882966; 478623, 4882973; 478627, 4882983; 478625, 4882993; 478625, 4882999.

(iii) Unit 11C (KL–11C): 479209, 4883080; 479213, 4883102; 479211, 4883128; 479213, 4883156; 479211, 4883190; 479211, 4883217; 479215, 4883247; 479211, 4883265; 479209, 4883283; 479217, 4883313; 479219, 4883337; 479239, 4883339; 479278, 4883339; 479320, 4883342; 479362, 4883342; 479389, 4883340; 479413, 4883340; 479443, 4883333; 479455, 4883325; 479445, 4883317; 479419, 4883305; 479409, 4883299; 479403, 4883279; 479397, 4883259; 479385, 4883239; 479377, 4883215; 479372, 4883204; 479373, 4883192; 479373, 4883176; 479375, 4883162; 479372, 4883148; 479362, 4883128; 479358, 4883120; 479354, 4883108; 479366, 4883104; 479370, 4883102; 479373, 4883083; 479372, 4883075; 479370, 4883061; 479366, 4883041; 479362, 4883025; 479346, 4883003; 479332, 4883007; 479334, 4882993; 479322, 4882977; 479306, 4882967; 479282, 4882967; 479266, 4882969; 479246, 4882973; 479227, 4882971; 479219, 4882977; 479213, 4882991; 479211, 4883009; 479209, 4883033; 479209, 4883080.

(iv) Unit 11D (KL–11D): 479942, 4882401; 479946, 4882431; 479954, 4882449; 479962, 4882455; 479980, 4882461; 479990, 4882465; 479999, 4882463; 480017, 4882459; 480037, 4882473; 480047, 4882494; 480063, 4882502; 480077, 4882508; 480109, 4882512; 480134, 4882518; 480158, 4882532; 480172, 4882532; 480172, 4882522; 480172, 4882500; 480174, 4882466; 480174, 4882391; 480174, 4882307; 480171, 4882234; 480169, 4882164; 480159, 4882157; 480143, 4882160; 480119, 4882161; 480100, 4882155; 480037, 4882155; 480023, 4882162; 480015, 4882171; 479994, 4882182; 479982, 4882179; 479978, 4882213; 479980, 4882240; 479978, 4882272; 479976, 4882288; 479968, 4882318; 479954, 4882344; 479944, 4882371; 479942, 4882401.

(v) Unit 11E (KL–11E): 481375, 4880635; 481376, 4880642; 481378, 4880650; 481382, 4880653; 481386, 4880656; 481391, 4880657; 481398, 4880658; 481400, 4880657; 481401, 4880675; 481437, 4880674; 481437, 4880675; 481443, 4880679; 481448, 4880686; 481454, 4880692; 481461, 4880697; 481466, 4880702; 481473, 4880709; 481478, 4880715; 481481, 4880724; 481484, 4880732; 481485, 4880737; 481486, 4880744; 481487, 4880751; 481488, 4880756; 481488, 4880762; 481488, 4880768; 481485, 4880774; 481482, 4880779; 481480, 4880786; 481478, 4880790; 481477, 4880795; 481475, 4880803; 481474, 4880808; 481473, 4880813; 481473, 4880820; 481467, 4880823; 481460, 4880829; 481455, 4880836; 481454, 4880844; 481455, 4880854; 481460, 4880864; 481464, 4880872; 481468, 4880877; 481472, 4880882; 481476, 4880886; 481481, 4880892; 481489, 4880897; 481495, 4880902; 481502, 4880908; 481511, 4880912; 481515, 4880917; 481521, 4880920; 481529, 4880923; 481535, 4880925; 481542, 4880927; 481547, 4880929; 481554, 4880928; 481562, 4880928; 481571, 4880927; 481579, 4880926; 481585, 4880924; 481592, 4880922; 481597, 4880919; 481601, 4880915; 481602, 4880913; 481612, 4880913; 481615, 4880820; 481611, 4880820; 481611, 4880816; 481612, 4880815; 481616, 4880815; 481616, 4880806; 481617, 4880802; 481620, 4880797; 481623, 4880792; 481624, 4880785; 481625, 4880779; 481624, 4880773; 481624, 4880768; 481624, 4880763; 481622, 4880754; 481621, 4880747; 481621, 4880738; 481619, 4880734; 481619, 4880726; 481619, 4880715; 481618, 4880702; 481618, 4880691; 481618, 4880679; 481618, 4880667; 481617, 4880657; 481617, 4880647; 481617, 4880635; 481617, 4880621; 481617, 4880610; 481616, 4880599; 481616, 4880591; 481616, 4880583; 481616, 4880575; 481616, 4880566; 481615, 4880556; 481615, 4880554; 481614, 4880528; 481593, 4880528; 481590, 4880526; 481585, 4880524; 481580, 4880525; 481572, 4880525; 481565, 4880525; 481559, 4880525; 481553, 4880523; 481548, 4880523; 481540, 4880523; 481534, 4880523; 481526, 4880522; 481519, 4880520; 481513, 4880519; 481508, 4880518; 481501, 4880518; 481492, 4880520; 481485, 4880522; 481478, 4880523; 481470, 4880525; 481463, 4880525; 481456, 4880525; 481451, 4880526; 481446, 4880527; 481440, 4880528; 481437, 4880529; 481399, 4880530; 481399, 4880545; 481399, 4880545; 481396, 4880551; 481392, 4880559; 481388, 4880568; 481385, 4880577; 481384, 4880586; 481382, 4880595; 481381, 4880600; 481381, 4880606; 481378, 4880617; 481376, 4880627; 481375, 4880635.

(vi) Unit 12A (KL–12A): 482595, 4878851; 482687, 4878901; 482911, 4878899; 482883, 4878825; 482792, 4878741; 482744, 4878644; 482654, 4878599; 482625, 4878583; 482637, 4878489; 482654, 4878466; 482492, 4878476; 482492, 4878521; 482544, 4878709; 482595, 4878851.

(vii) Unit 12B (KL–12B): 483896, 4878996; 483911, 4878992; 483905, 4878969; 483900, 4878970; 483898, 4878969; 483891, 4878967; 483885, 4878967; 483879, 4878968; 483872,

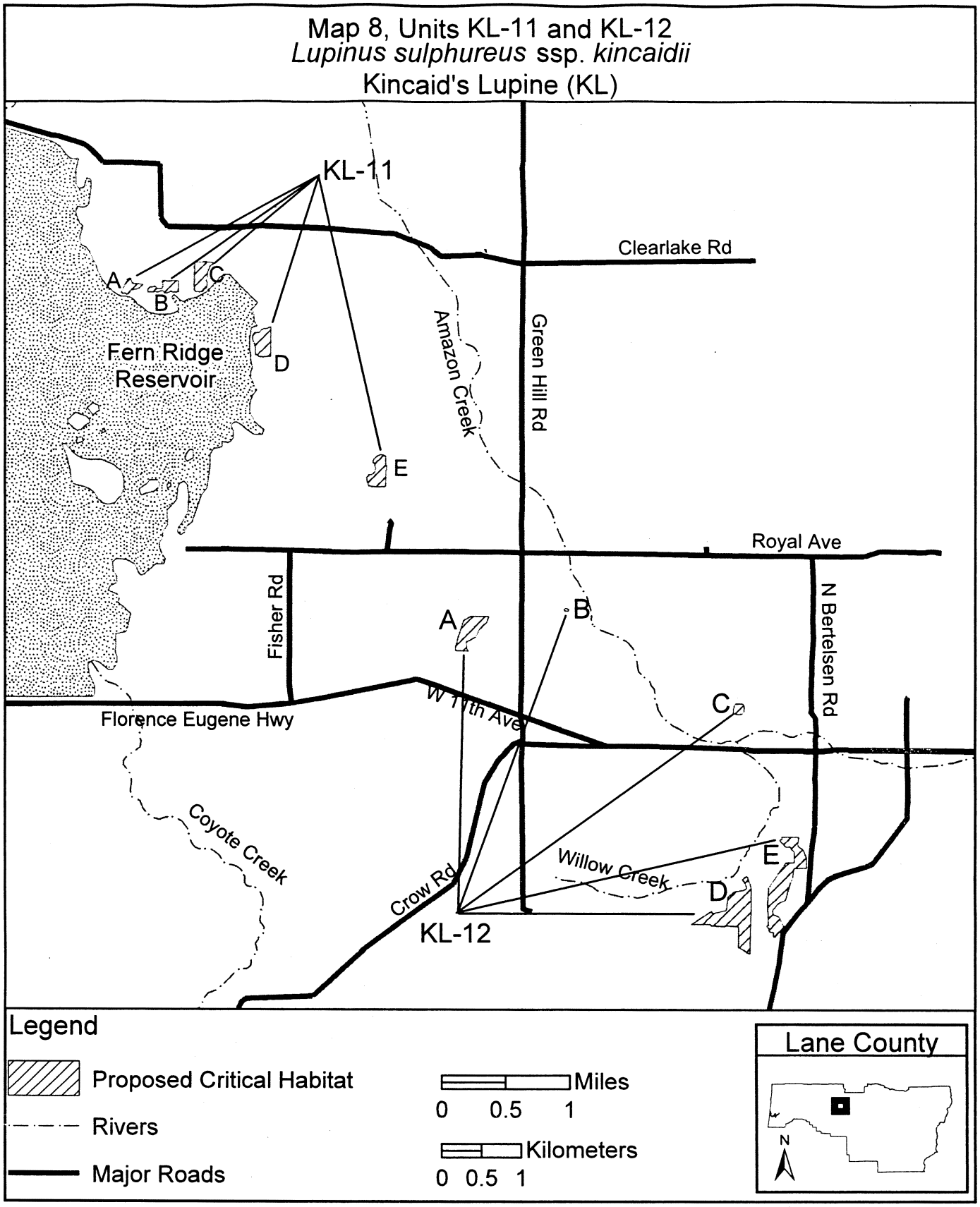
4878969; 483865, 4878971; 483862, 4878974; 483860, 4878980; 483860, 4878989; 483862, 4878998; 483869, 4879003; 483877, 4879006; 483887, 4879003; 483896, 4878996.

(viii) Unit 12C (KL–12C): 485980, 4877758; 485984, 4877781; 485987, 4877794; 485999, 4877814; 486024, 4877817; 486038, 4877818; 486042, 4877818; 486064, 4877815; 486085, 4877816; 486099, 4877812; 486110, 4877795; 486113, 4877755; 486111, 4877741; 486112, 4877740; 486112, 4877737; 486112, 4877737; 486112, 4877736; 486112, 4877735; 486110, 4877734; 486110, 4877734; 486107, 4877713; 486106, 4877708; 486095, 4877689; 486073, 4877685; 486030, 4877683; 486019, 4877685; 486000, 4877689; 485980, 4877691; 485976, 4877703; 485978, 4877735; 485980, 4877755; 485980, 4877758.

(ix) Unit 12D (KL–12D): 486092, 4875616; 486105, 4875626; 486123, 4875643; 486143, 4875649; 486156, 4875646; 486159, 4875643; 486163, 4875634; 486164, 4875624; 486166, 4875609; 486169, 4875599; 486174, 4875586; 486190, 4875560; 486193, 4875549; 486195, 4875534; 486197, 4875513; 486200, 4875474; 486201, 4875316; 486185, 4874677; 486042, 4874749; 486045, 4875053; 485886, 4875057; 485910, 4875396; 485986, 4875456; 486062, 4875471; 486072, 4875472; 486086, 4875473; 486088, 4875478; 486096, 4875476; 486143, 4875502; 486141, 4875516; 486141, 4875526; 486138, 4875537; 486132, 4875540; 486115, 4875576; 486116, 4875585; 486113, 4875587; 486113, 4875591; 486100, 4875599; 486094, 4875607; 486092, 4875611; 486092, 4875616.

(x) Unit 12E (KL–12E): 486401, 4875024; 486422, 4875028; 486417, 4875033; 486405, 4875292; 486421, 4875508; 486517, 4875652; 486614, 4875792; 486640, 4875821; 486742, 4875825; 486742, 4875951; 486725, 4875983; 486714, 4875983; 486709, 4875984; 486702, 4875993; 486694, 4876021; 486685, 4876033; 486684, 4876035; 486680, 4876031; 486676, 4876028; 486672, 4876025; 486660, 4876020; 486657, 4876018; 486652, 4876018; 486639, 4876025; 486629, 4876029; 486620, 4876034; 486614, 4876044; 486613, 4876052; 486610, 4876058; 486605, 4876068; 486594, 4876067; 486589, 4876066; 486585, 4876068; 486581, 4876078; 486576, 4876086; 486568, 4876093; 486565, 4876102; 486563, 4876110; 486565, 4876115; 486573, 4876118; 486577, 4876118; 486583, 4876115; 486588, 4876113; 486592, 4876119; 486590, 4876128; 486585, 4876137; 486580, 4876144; 486579, 4876147; 486795, 4876145; 486793, 4876121; 486790, 4876107; 486783, 4876064; 486783, 4876051; 486790, 4876034; 486805, 4876021; 486842, 4875993; 486855, 4875977; 486860, 4875962; 486869, 4875946; 486883, 4875908; 486893, 4875878; 486895, 4875857; 486896, 4875826; 486892, 4875791; 486893, 4875754; 486886, 4875756; 486738, 4875751; 486734, 4875744; 486731, 4875711; 486725, 4875665; 486720, 4875629; 486693, 4875573; 486629, 4875348; 486549, 4875312; 486469, 4875220; 486477, 4875168; 486553, 4875136; 486603, 4875021; 486608, 4875021; 486616, 4875020; 486601, 4874935; 486577, 4874945; 486546, 4874949; 486507, 4874882; 486482, 4874888; 486481, 4874944; 486439, 4874947; 486424, 4874957; 486426, 4874980; 486427, 4875000; 486409, 4875006; 486398, 4875018; 486401, 4875024.

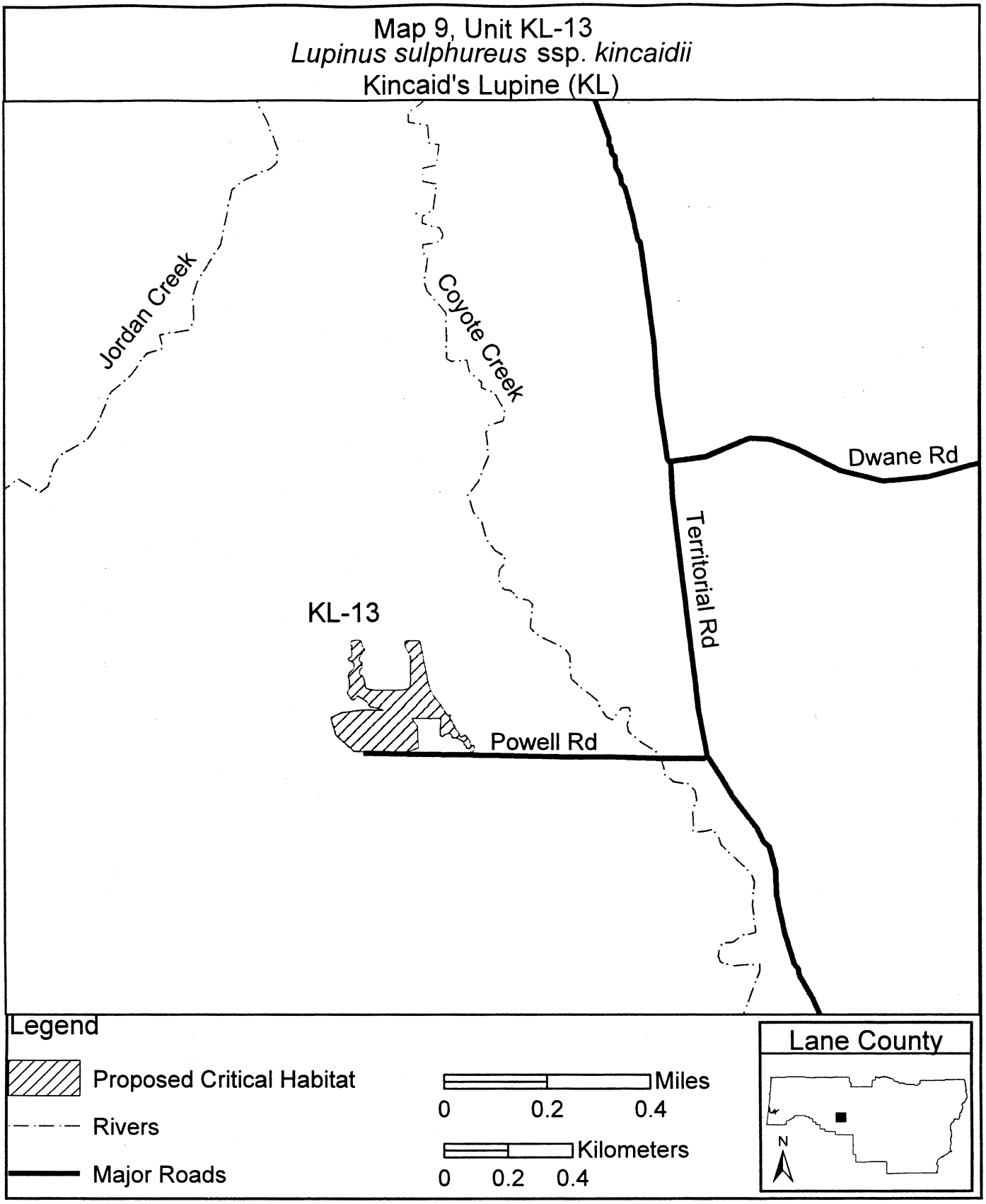
(xi) **Note:** Map 8 of Units 11 and 12 for *Lupinus sulphureus* ssp. *kincaidii* (KL–11 and KL–12) follows:


Map 8, Units KL-11 and KL-12
Lupinus sulphureus ssp. kincaidii
Kincaid's Lupine (KL)
KL-11
Clearlake Rd
A
B
C
D
E
Fern Ridge Reservoir
Amazon Creek
Green Hill Rd
Royal Ave
Fisher Rd
N Bertelsen Rd
W 11th Ave
Florence Eugene Hwy
Coyote Creek
Willow Creek
Crow Rd
KL-12
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.5 1
Kilometers
0 0.5 1
Lane County
N

(13) Unit 13 for *Lupinus sulphureus* ssp. *kincaidii* (KL–13), Lane County, Oregon.

(i) Unit 13 (KL–13): 477328, 4863592; 477293, 4863594; 477280, 4863594; 477223, 4863645; 477206, 4863699; 477241, 4863716; 477310, 4863725; 477372, 4863723; 477355, 4863728; 477341, 4863733; 477332, 4863733; 477326, 4863738; 477320, 4863745; 477314, 4863752; 477309, 4863756; 477298, 4863761; 477295, 4863763; 477287, 4863764; 477285, 4863760; 477282, 4863756; 477277, 4863752; 477271, 4863755; 477270, 4863757; 477265, 4863763; 477259, 4863773; 477261, 4863782; 477264, 4863786; 477265, 4863794; 477265, 4863801; 477265, 4863809; 477264, 4863817; 477262, 4863825; 477264, 4863835; 477270, 4863842; 477275, 4863846; 477279, 4863853; 477280, 4863860; 477278, 4863868; 477274, 4863872; 477270, 4863874; 477264, 4863875; 477260, 4863880; 477263, 4863883; 477267, 4863885; 477271, 4863889; 477274, 4863894; 477273, 4863903; 477270, 4863909; 477272, 4863916; 477275, 4863922; 477270, 4863926; 477267, 4863930; 477270, 4863936; 477275, 4863939; 477281, 4863940; 477288, 4863940; 477298, 4863940; 477302, 4863937; 477304, 4863927; 477306, 4863922; 477312, 4863912; 477311, 4863909; 477309, 4863905; 477305, 4863899; 477300, 4863892; 477298, 4863887; 477296, 4863883; 477294, 4863878; 477296, 4863874; 477300, 4863870; 477304, 4863869; 477306, 4863865; 477304, 4863859; 477304, 4863853; 477298, 4863847; 477296, 4863839; 477297, 4863834; 477300, 4863830; 477306, 4863828; 477307, 4863827; 477309, 4863824; 477310, 4863819; 477310, 4863815; 477313, 4863804; 477315, 4863796; 477316, 4863790; 477323, 4863787; 477333, 4863785; 477344, 4863784; 477356, 4863783; 477361, 4863783; 477372, 4863783; 477384, 4863784; 477400, 4863783; 477416, 4863784; 477432, 4863784; 477441, 4863785; 477448, 4863789; 477454, 4863796; 477455, 4863807; 477456, 4863822; 477455, 4863836; 477456, 4863859; 477455, 4863868; 477456, 4863878; 477455, 4863890; 477452, 4863897; 477445, 4863910; 477441, 4863916; 477439, 4863926; 477438, 4863933; 477441, 4863937; 477450, 4863939; 477464, 4863940; 477473, 4863939; 477482, 4863939; 477486, 4863935; 477487, 4863927; 477488, 4863922; 477491, 4863910; 477493, 4863901; 477495, 4863889; 477498, 4863873; 477502, 4863854; 477508, 4863822; 477516, 4863792; 477526, 4863769; 477539, 4863754; 477557, 4863729; 477564, 4863719; 477567, 4863715; 477568, 4863712; 477571, 4863710; 477572, 4863707; 477574, 4863705; 477578, 4863708; 477580, 4863709; 477582, 4863709; 477582, 4863706; 477577, 4863701; 477579, 4863699; 477580, 4863696; 477582, 4863695; 477583, 4863691; 477586, 4863689; 477588, 4863683; 477590, 4863679; 477593, 4863675; 477594, 4863672; 477597, 4863666; 477599, 4863663; 477606, 4863654; 477607, 4863651; 477609, 4863649; 477610, 4863646; 477612, 4863643; 477614, 4863639; 477625, 4863645; 477630, 4863645; 477632, 4863640; 477636, 4863638; 477639, 4863631; 477641, 4863628; 477642, 4863626; 477643, 4863623; 477644, 4863621; 477646, 4863616; 477645, 4863614; 477646, 4863612; 477652, 4863614; 477657, 4863610; 477656, 4863601; 477654, 4863598; 477652, 4863596; 477652, 4863592; 477650, 4863590; 477648, 4863591; 477645, 4863598; 477643, 4863602; 477641, 4863603; 477640, 4863605; 477634, 4863604; 477633, 4863603; 477631, 4863608; 477630, 4863613; 477627, 4863615; 477624, 4863618; 477623, 4863622; 477621, 4863625; 477618, 4863628; 477615, 4863629; 477611, 4863632; 477609, 4863632; 477604, 4863635; 477595, 4863637; 477587, 4863637; 477586, 4863640; 477586, 4863645; 477584, 4863649; 477581, 4863650; 477576, 4863652; 477573, 4863651; 477568, 4863648; 477565, 4863648; 477562, 4863645; 477558, 4863642; 477555, 4863641; 477550, 4863644; 477549, 4863646; 477549, 4863658; 477549, 4863666; 477550, 4863668; 477550, 4863670; 477549, 4863672; 477551, 4863675; 477550, 4863680; 477551, 4863684; 477551, 4863689; 477551, 4863691; 477551, 4863696; 477553, 4863696; 477552, 4863697; 477523, 4863697; 477519, 4863696; 477515, 4863697; 477495, 4863697; 477493, 4863698; 477491, 4863697; 477475, 4863697; 477471, 4863698; 477469, 4863697; 477460, 4863697; 477476, 4863673; 477480, 4863605; 477440, 4863591; 477378, 4863589; 477374, 4863585; 477360, 4863580; 477344, 4863582; 477332, 4863589; 477328, 4863592.

(ii) **Note:** Map 9 of Unit 13 for *Lupinus sulphureus* ssp. *kincaidii* (KL–13) follows:

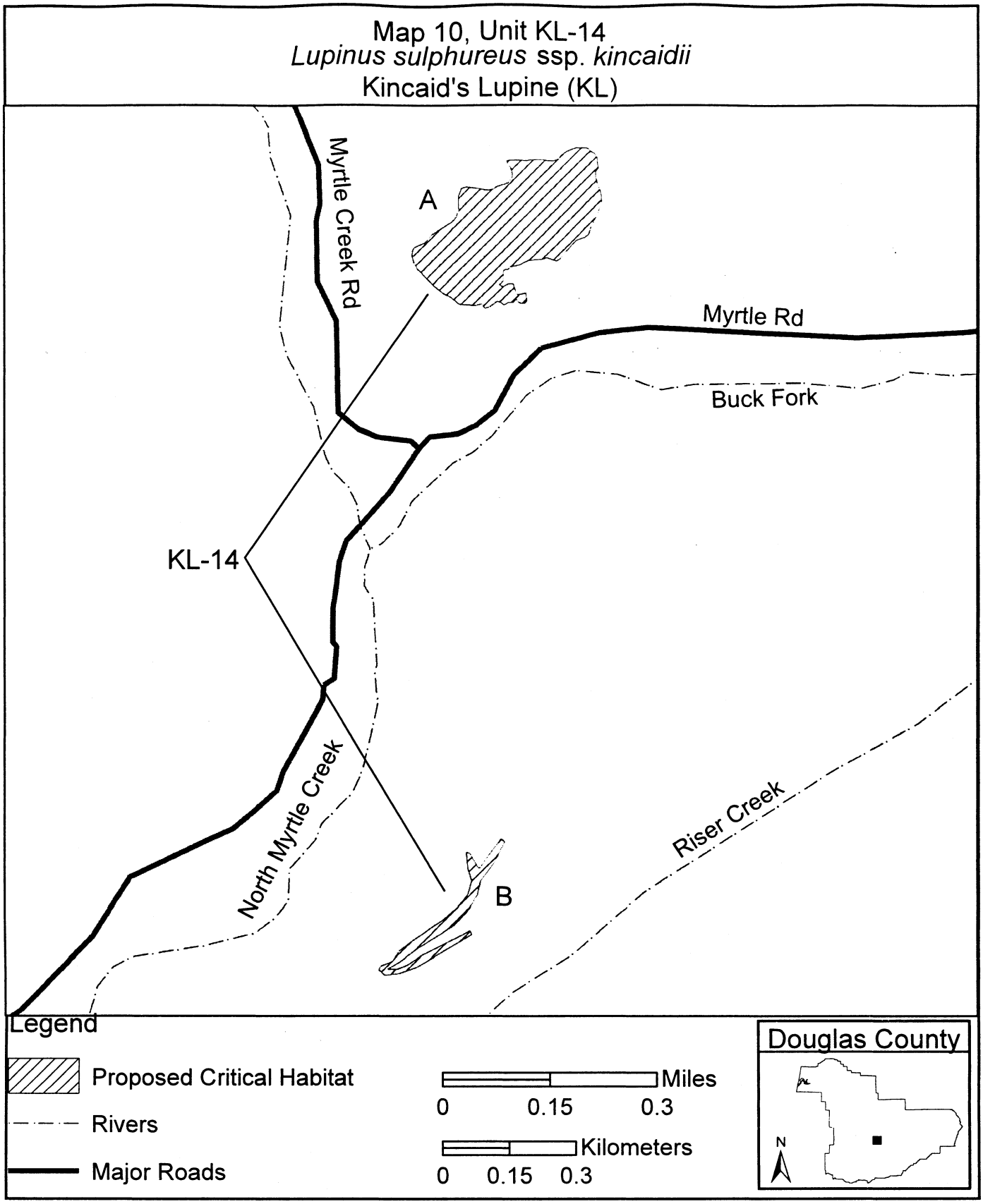

Map 9, Unit KL-13
Lupinus sulphureus ssp. kincaidii
Kincaid's Lupine (KL)
Jordan Creek
Coyote Creek
Dwane Rd
Territorial Rd
KL-13
Powell Rd
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.2 0.4
Kilometers
0 0.2 0.4
Lane County
N

(14) Unit 14 for *Lupinus sulphureus* ssp. *kincaidii* (KL–14), Douglas County, Oregon.

(i) Unit 14A (KL–14A): 490602, 4776084; 490612, 4776077; 490618, 4776068; 490618, 4776057; 490620, 4776044; 490614, 4776037; 490615, 4776021; 490618, 4776008; 490625, 4775994; 490627, 4775981; 490627, 4775976; 490628, 4775965; 490622, 4775954; 490620, 4775947; 490615, 4775935; 490607, 4775918; 490604, 4775913; 490598, 4775896; 490591, 4775890; 490572, 4775883; 490570, 4775881; 490562, 4775874; 490554, 4775864; 490547, 4775857; 490536, 4775841; 490526, 4775835; 490517, 4775838; 490504, 4775843; 490494, 4775839; 490477, 4775838; 490463, 4775837; 490451, 4775831; 490445, 4775827; 490431, 4775824; 490422, 4775823; 490417, 4775816; 490411, 4775817; 490406, 4775814; 490406, 4775797; 490406, 4775791; 490397, 4775784; 490405, 4775778; 490411, 4775782; 490418, 4775786; 490428, 4775785; 490433, 4775769; 490438, 4775760; 490448, 4775762; 490456, 4775764; 490458, 4775754; 490459, 4775746; 490453, 4775740; 490440, 4775742; 490435, 4775750; 490428, 4775742; 490418, 4775743; 490407, 4775737; 490401, 4775742; 490392, 4775745; 490386, 4775740; 490375, 4775733; 490365, 4775730; 490358, 4775739; 490343, 4775735; 490321, 4775737; 490306, 4775738; 490295, 4775748; 490285, 4775756; 490272, 4775762; 490258, 4775773; 490250, 4775780; 490240, 4775790; 490231, 4775799; 490223, 4775809; 490214, 4775816; 490205, 4775831; 490201, 4775848; 490202, 4775858; 490205, 4775865; 490215, 4775870; 490229, 4775876; 490236, 4775883; 490244, 4775894; 490261, 4775904; 490280, 4775916; 490290, 4775921; 490298, 4775932; 490300, 4775936; 490303, 4775943; 490306, 4775950; 490305, 4775956; 490306, 4775969; 490306, 4775980; 490310, 4775993; 490312, 4775998; 490323, 4776002; 490339, 4775999; 490352, 4775998; 490366, 4775995; 490373, 4775995; 490382, 4775996; 490392, 4776002; 490406, 4776007; 490418, 4776012; 490425, 4776021; 490426, 4776030; 490425, 4776037; 490422, 4776046; 490417, 4776052; 490413, 4776060; 490418, 4776062; 490433, 4776062; 490443, 4776062; 490457, 4776061; 490467, 4776062; 490482, 4776063; 490495, 4776062; 490506, 4776061; 490516, 4776060; 490531, 4776064; 490536, 4776071; 490549, 4776082; 490562, 4776087; 490573, 4776091; 490583, 4776090; 490595, 4776090; 490600, 4776087; 490602, 4776084.

(ii) Unit 14B (KL–14 B): 490166, 4774242; 490191, 4774252; 490218, 4774271; 490330, 4774328; 490334, 4774320; 490211, 4774246; 490187, 4774238; 490169, 4774232; 490138, 4774229; 490132, 4774235; 490125, 4774241; 490130, 4774250; 490156, 4774260; 490171, 4774283; 490205, 4774308; 490268, 4774351; 490304, 4774382; 490326, 4774410; 490334, 4774440; 490326, 4774467; 490322, 4774504; 490329, 4774503; 490351, 4774467; 490357, 4774476; 490368, 4774491; 490376, 4774502; 490401, 4774535; 490408, 4774528; 490387, 4774485; 490376, 4774468; 490354, 4774439; 490347, 4774409; 490326, 4774373; 490293, 4774339; 490212, 4774288; 490174, 4774259; 490146, 4774243; 490166, 4774242.

(iii) **Note:** Map 10 of Unit 14 for *Lupinus sulphureus* ssp. *kincaidii* (KL–14) follows:

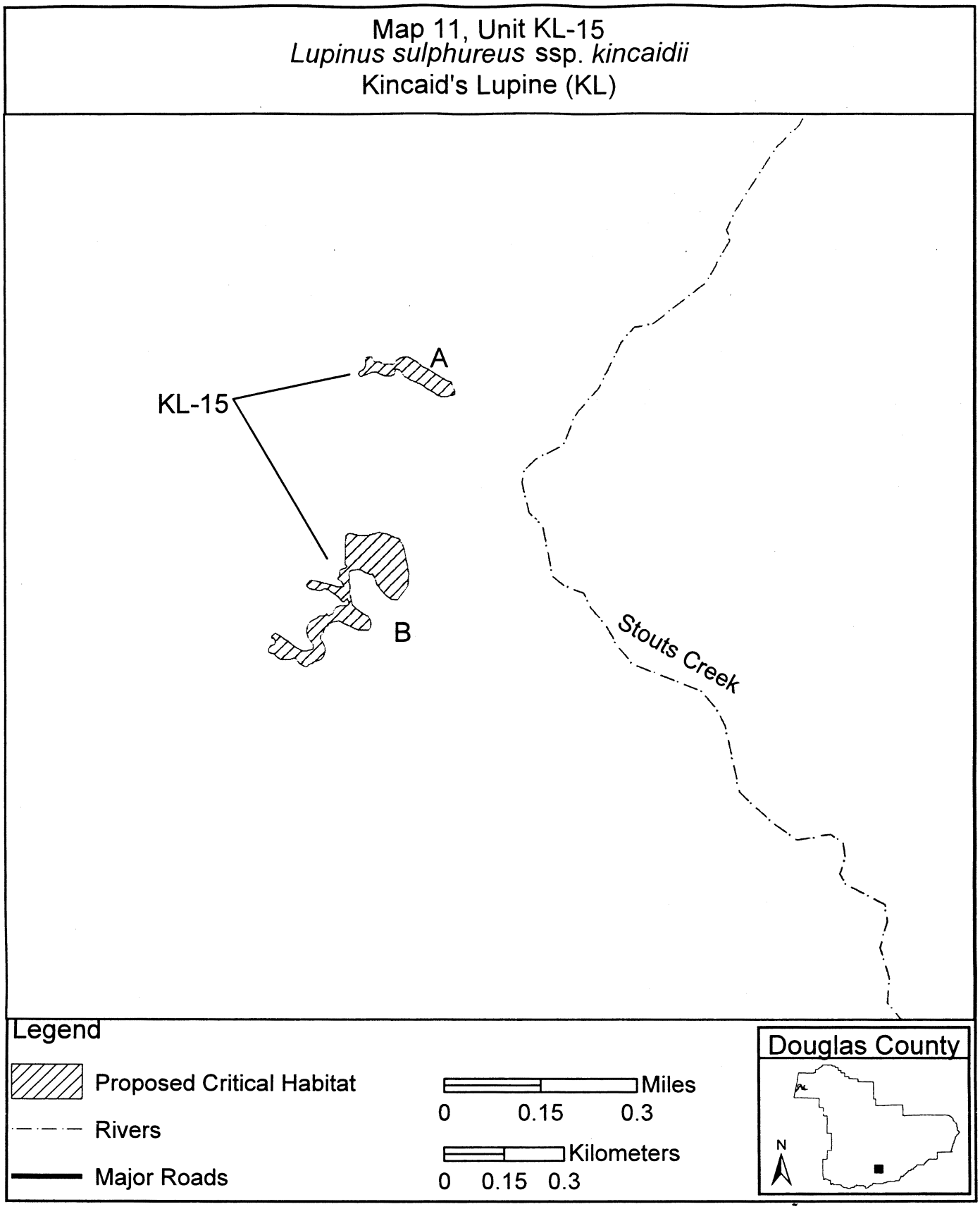

Map 10, Unit KL-14
Lupinus sulphureus ssp. kincaidii
Kincaid's Lupine (KL)
Myrtle Creek Rd
A
Myrtle Rd
Buck Fork
KL-14
North Myrtle Creek
Riser Creek
B
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.15 0.3
Kilometers
0 0.15 0.3
Douglas County
N

(15) Unit 15 for *Lupinus sulphureus* ssp. *kincaidii* (KL–15), Douglas County, Oregon.

(i) Unit 15A (KL–15A): 494125, 4749925; 494126, 4749931; 494137, 4749937; 494141, 4749943; 494144, 4749954; 494144, 4749957; 494143, 4749961; 494143, 4749965; 494146, 4749969; 494152, 4749971; 494158, 4749970; 494159, 4749967; 494162, 4749961; 494166, 4749956; 494177, 4749957; 494190, 4749949; 494202, 4749952; 494212, 4749950; 494215, 4749955; 494219, 4749960; 494223, 4749963; 494227, 4749966; 494234, 4749968; 494240, 4749970; 494249, 4749970; 494255, 4749968; 494261, 4749964; 494270, 4749958; 494277, 4749952; 494284, 4749947; 494288, 4749944; 494293, 4749941; 494299, 4749939; 494347, 4749908; 494358, 4749906; 494360, 4749898; 494365, 4749887; 494367, 4749877; 494362, 4749871; 494354, 4749873; 494354, 4749871; 494344, 4749868; 494336, 4749868; 494326, 4749872; 494318, 4749877; 494313, 4749881; 494307, 4749884; 494296, 4749889; 494290, 4749894; 494281, 4749901; 494269, 4749904; 494255, 4749911; 494239, 4749920; 494235, 4749928; 494231, 4749935; 494221, 4749939; 494217, 4749938; 494216, 4749925; 494206, 4749921; 494190, 4749921; 494177, 4749927; 494170, 4749931; 494168, 4749931; 494158, 4749931; 494157, 4749930; 494151, 4749927; 494143, 4749924; 494131, 4749920; 494127, 4749922; 494125, 4749925.

(ii) Unit 15B (KL–15B): 494094, 4749518; 494100, 4749524; 494107, 4749523; 494114, 4749521; 494126, 4749519; 494142, 4749518; 494150, 4749519; 494160, 4749521; 494164, 4749522; 494172, 4749525; 494177, 4749526; 494184, 4749525; 494197, 4749521; 494214, 4749514; 494228, 4749509; 494235, 4749495; 494240, 4749482; 494242, 4749471; 494244, 4749459; 494248, 4749444; 494248, 4749434; 494251, 4749423; 494250, 4749413; 494250, 4749402; 494248, 4749391; 494239, 4749379; 494228, 4749365; 494223, 4749357; 494208, 4749358; 494195, 4749368; 494187, 4749375; 494172, 4749395; 494168, 4749406; 494163, 4749415; 494161, 4749422; 494154, 4749420; 494145, 4749424; 494137, 4749428; 494134, 4749431; 494127, 4749433; 494118, 4749433; 494110, 4749432; 494106, 4749430; 494102, 4749428; 494101, 4749422; 494101, 4749416; 494102, 4749409; 494100, 4749403; 494100, 4749402; 494104, 4749391; 494104, 4749387; 494102, 4749378; 494101, 4749375; 494103, 4749370; 494110, 4749343; 494117, 4749336; 494126, 4749328; 494140, 4749321; 494150, 4749316; 494155, 4749307; 494156, 4749298; 494155, 4749288; 494149, 4749282; 494133, 4749282; 494124, 4749282; 494110, 4749288; 494097, 4749295; 494085, 4749300; 494077, 4749305; 494068, 4749304; 494058, 4749301; 494053, 4749298; 494048, 4749298; 494049, 4749293; 494044, 4749291; 494042, 4749289; 494039, 4749285; 494038, 4749281; 494035, 4749275; 494030, 4749267; 494030, 4749258; 494035, 4749249; 494039, 4749240; 494041, 4749232; 494039, 4749223; 494036, 4749215; 494030, 4749207; 494016, 4749203; 494006, 4749198; 493998, 4749196; 493998, 4749193; 493995, 4749191; 493991, 4749191; 493987, 4749193; 493983, 4749196; 493978, 4749198; 493972, 4749202; 493968, 4749208; 493968, 4749211; 493960, 4749210; 493951, 4749208; 493928, 4749208; 493923, 4749211; 493920, 4749213; 493916, 4749218; 493913, 4749222; 493905, 4749223; 493900, 4749226; 493899, 4749228; 493898, 4749232; 493901, 4749238; 493903, 4749242; 493908, 4749244; 493914, 4749246; 493916, 4749251; 493915, 4749257; 493911, 4749262; 493906, 4749263; 493907, 4749266; 493911, 4749270; 493915, 4749274; 493930, 4749266; 493938, 4749260; 493946, 4749255; 493951, 4749251; 493960, 4749243; 493970, 4749237; 493977, 4749233; 493984, 4749229; 493995, 4749230; 494010, 4749233; 494011, 4749240; 494010, 4749247; 494005, 4749253; 493997, 4749264; 493996, 4749272; 493994, 4749277; 493995, 4749283; 493997, 4749292; 494002, 4749301; 494010, 4749308; 494020, 4749311; 494022, 4749315; 494026, 4749317; 494035, 4749317; 494046, 4749322; 494046, 4749319; 494051, 4749318; 494060, 4749322; 494061, 4749327; 494065, 4749333; 494069, 4749338; 494077, 4749342; 494083, 4749343; 494091, 4749341; 494100, 4749344; 494100, 4749350; 494097, 4749361; 494092, 4749355; 494085, 4749352; 494076, 4749363; 494065, 4749372; 494058, 4749376; 494050, 4749383; 494041, 4749385; 494035, 4749384; 494029, 4749380; 494022, 4749382; 494006, 4749384; 494000, 4749386; 493996, 4749390; 493993, 4749394; 493999, 4749399; 494001, 4749403; 494004, 4749405; 494010, 4749405; 494053, 4749395; 494063, 4749392; 494070, 4749389; 494079, 4749389; 494087, 4749390; 494084, 4749400; 494080, 4749404; 494078, 4749407; 494073, 4749408; 494073, 4749412; 494077, 4749416; 494078, 4749424; 494078, 4749430; 494080, 4749433; 494085, 4749434; 494088, 4749435; 494095, 4749438; 494096, 4749441; 494091, 4749446; 494039, 4749317; 494041, 4749318; 494042, 4749319; 494043, 4749321; 494045, 4749324; 494091, 4749457; 494092, 4749463; 494092, 4749484; 494091, 4749489; 494092, 4749503; 494093, 4749510; 494094, 4749518.

(iii) **Note:** Map 11 of Unit 15 for *Lupinus sulphureus* ssp. *kincaidii* (KL–15) follows:

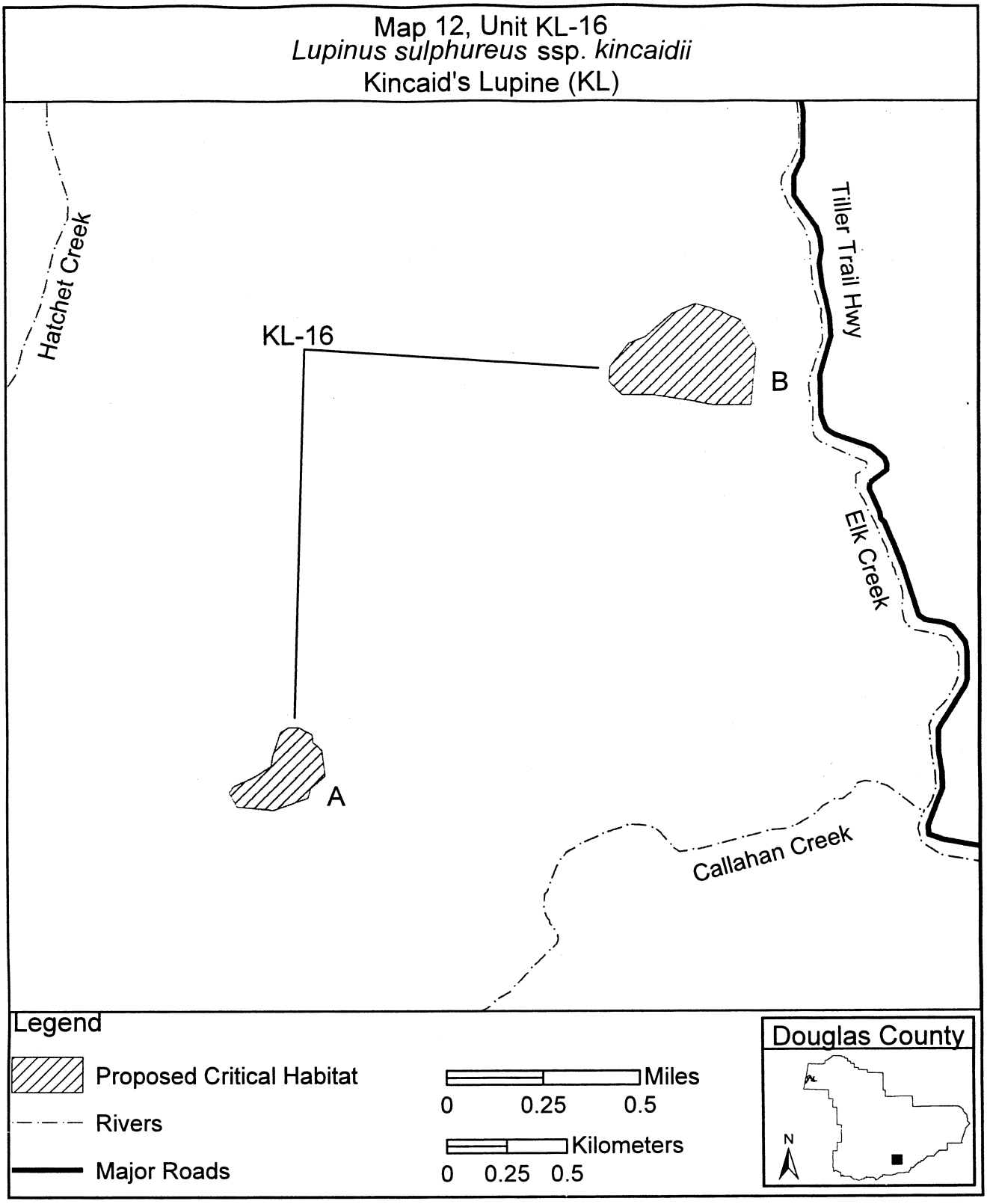

Map 11, Unit KL-15
Lupinus sulphureus ssp. kincaidii
Kincaid's Lupine (KL)
KL-15
A
B
Stouts Creek
Legend
Proposed Critical Habitat
Rivers
Major Roads
Miles
0 0.15 0.3
Kilometers
0 0.15 0.3
Douglas County
N

(16) Unit 16 for *Lupinus sulphureus* ssp. *kincaidii* (KL–16), Douglas County, Oregon.

(i) Unit 16A (KL–16A): 503016, 4749664; 503030, 4749556; 503007, 4749538; 502968, 4749502; 502958, 4749463; 502814, 4749412; 502662, 4749428; 502628, 4749486; 502648, 4749512; 502738, 4749554; 502804, 4749595; 502810, 4749637; 502845, 4749741; 502880, 4749760; 502922, 4749759; 502976, 4749731; 502979, 4749697; 503016, 4749664.

(ii) Unit 16B (KL–16B): 504719, 4751476; 504768, 4751456; 504833, 4751339; 504810, 4751102; 504659, 4751102; 504407, 4751141; 504275, 4751141; 504219, 4751199; 504225, 4751260; 504303, 4751358; 504371, 4751385; 504483, 4751483; 504578, 4751524; 504626, 4751513; 504691, 4751491; 504719, 4751476.

(iii) **Note:** Map 12 of Unit 16 for *Lupinus sulphureus* ssp. *kincaidii* (KL–16) follows:



* * * * *

Dated: October 17, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–21333 Filed 11–1–05; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Wednesday,
November 2, 2005

Part III

Department of Defense

Department of the Army

32 CFR Part 578

Decorations, Medals, Ribbons, and Similar Devices; Proposed Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 578

RIN 0702–AA41–U

Decorations, Medals, Ribbons, and Similar Devices

AGENCY: Department of the Army, DOD.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of the Army is proposing to revise our rules that prescribe policy, criteria, and administrative instructions concerning individual military awards and to incorporate laws enacted and policies approved since the rule was last published in 1956.

DATES: Comments must be submitted to the address shown below on or before January 3, 2006.

ADDRESSES: You may submit comments identified by ''32 CFR Part 578 and RIN 0702–AA41'' in the subject line, by any of the following methods:

- Federal eRulemaking Portal: *http:www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *Awards@hoffman.army.mil.* Include ''32 CFR Part 578 and RIN 0702–AA41'' in the subject line of the message.
- Mail: HQ, U.S. Army Human Resources Command, Military Awards Branch, ATTN: AHRC–PDO–PA (Arlette King), 200 Stovall Street, Alexandria, VA 22332–0471.
- Facsimile: (703) 325–2581. Please cite ''32 CFR Part 578 and RIN 0702–AA41'' in the subject line of comments.

FOR FURTHER INFORMATION CONTACT: Mrs. Arlette King, Chief, Policy Section, Military Awards Branch or Ms. Denise Harris, Assistant Chief, Policy Section, Military Awards at (703) 325–9171.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule replaces the proposed rule that previously published in the **Federal Register** on July 28, 2004 (69 FR 45114). This proposed rule prescribes policy, criteria, and administrative instructions concerning individual military awards and incorporates laws enacted and policies approved since the rule was last published in 1956.

B. Discussion of Proposed Rule

This proposed rule adds the provisions of 10 U.S.C. 1130, that allows the consideration of awards not previously considered or the upgrade of decorations previously approved (§ 578.5g and § 578.8g(2). This rule adds policy on the issuance of display Medals of Honor (§ 578.3). This rule adds the procedures for awarding U.S. awards to foreign military personnel (§ 578.8h). This rule updates the criteria for the Purple Heart limiting award only to members of the U.S. military; clarifies award for friendly fire; and authorizes award to individuals wounded while prisoners of foreign forces for World War II and Korea (§ 578.17). This rule adds the authority for Brigadier General Commanders to award the Meritorious Service Medal to U.S. Army personnel assigned or attached to duty to their command or agency (Table 3). This rule adds the provisions of 10 U.S.C. 1133 that limits award of the Bronze Star Medal to service members receiving imminent danger pay (§ 578.16). This rule is being amended to add the following new individual decorations: Meritorious Service Medal (§ 578.18) and Army Achievement Medal (§ 578.21). It also adds the following service/campaign medals: Prisoner of War Medal (§ 578.22): Southwest Asia Service Medal (§ 578.27); Kosovo Campaign Medal (§ 578.28); Afghanistan Campaign Medal (§ 578.29); Iraq Campaign Medal (§ 578.30); Global War on Terrorism Expeditionary Medal (§ 578.31); Global War on Terrorism Service Medal (§ 578.32); Korea Defense Service Medal (§ 578.33); Armed Forces Service Medal (§ 578.34); Humanitarian Service Medal (§ 578.35); Military Outstanding Volunteer Service Medal (§ 578.36); Army Reserve Components Achievement Medal (§ 578.38); Army Reserve Components Overseas Training Ribbon (§ 578.39); Overseas Service Ribbon (§ 578.40); Army Service Ribbon (§ 578.41); and the Noncommissioned Officer Professional Development Ribbon (§ 578. 42). It also adds the following unit awards: Presidential Unit Citation (§ 578.57); Valorous Unit Award (§ 578.58); Meritorious Unit Commendation (§ 578.59); and the Army Superior Unit Award (§ 578.60). This rule updates criteria on the Combat Infantryman Badge (§ 578.69) and the Combat Medical Badge (§ 578.70). The following special skill badges are added: Combat Action Badge (§ 578.71); Expert Field Medical Badge (§ 578.73); Parachute Rigger Badge (§ 578.78); Military Free Fall Parachutist Badge (§ 578.79); Flight Surgeon Badge (formerly Army Aviation Medical Officer Badge) (§ 578.81); Special Operations Diver Badge (§ 578.83); Pathfinder Badge (§ 578.88); Air Assault Badge (§ 578.89); Aviation Badge (§ 578.90); Glider Badge (§ 578.95); Nuclear Reactor Operator Badge (§ 578.96); Special Forces Tab (§ 578.99); Sapper Tab (§ 578.100); and the Physical Fitness Badge (§ 578.101). This rule adds the following identification badges: Presidential Service Badge and Certificate (§ 578.105); Vice Presidential Service Badge and Certificate (§ 578.106); Office of the Secretary of Defense Identification Badge (§ 578.107), Joint Chiefs of Staff Identification Badge (§ 578.108); Army Staff Identification Badge (§ 578.109); Guard, Tomb of the Unknown Soldier Identification Badge (§ 578.110); Army ROTC Nurse Cadet Program Identification Badge (§ 578.111); Drill Sergeant Identification Badge (§ 578.112); U.S. Army Recruiter Identification Badge (§ 578.113); Career Counselor Badge (§ 578.114); and Army National Guard Recruiting and Retention Identification Badge (§ 578.115). It also adds the following foreign/international awards: North Atlantic Treaty Organization Medal (§ 578.127); Multinational Force and Observers Medal (§ 578.128); Republic of Vietnam Campaign Medal (§ 578.129); Kuwait Liberation Medal-Saudi Arabia (§ 578.130); Kuwait Liberation Medal-Kuwait (§ 578.131); and the Republic of Korea War Service Medal (§ 578.132). The following certificates are added: Certificate of Appreciation to Employers (§ 578.135); Certificate for Badges (§ 578.136); and the Cold War Recognition Certificate (§ 578.137). This rule deletes the following medals which are obsolete and no longer awarded: Medal of Merit (formerly § 578.15) and National Security Medal (formerly (§ 578.16). This rule deletes the Joint Service Commendation Medal (formerly § 578.12) that is prescribed in Department of Defense 1348.33–M, Manual of Military Decorations and Awards. This rule deletes the following two civilian awards: Distinguished Civilian Service Medal (formerly § 578.7g) and Outstanding Civilian Service Medal (formerly § 578.7h) both are prescribed in Army Regulation 672–20, Incentive Awards. This rule deletes the Presidential Medal of Freedom (formerly § 578.17) that is governed and awarded by the President of the United States and not the Department of the Army.

C. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the proposed rule does not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Executive Order 12866

The Department of the Army has determined that according to the criteria defined in Executive Order 12866 this proposed rule is not considered a significant regulatory action. As such, the proposed rule is not subject to Office of Management and Budget review under section 6(a)(3) of the Executive Order.

James P. Larsen,

Col, AG, Deputy, The Adjutant General.

Lists of Subjects in 32 CFR Part 578

Decorations, Medals, Awards, Military personnel.

For the reasons stated in the preamble, the Department of the Army proposes to revise 32 CFR Part 578 to read as follows:

PART 578—DECORATIONS, MEDALS, RIBBONS, AND SIMILAR DEVICES

Sec.
578.1 Purpose
578.2 Explanation of terms
578.3 Display sets of award elements and the Medal of Honor
578.4 U.S. Military Decorations
578.5 Award Recommendations
578.6 Wartime Criteria
578.7 Peacetime Criteria
578.8 General Rules
578.9 Medal of Honor
578.10 Distinguished Service Cross
578.11 Distinguished Service Medal
578.12 Silver Star
578.13 Legion of Merit
578.14 Distinguished Flying Cross
578.15 Soldier's Medal
578.16 Bronze Star Medal
578.17 Purple Heart
578.18 Meritorious Service Medal
578.19 Air Medal
578.20 Army Commendation Medal
578.21 Army Achievement Medal
578.22 Prisoner of War Medal
578.23 National Defense Service Medal
578.24 Antarctica Service Medal
578.25 Armed Forces Expeditionary Medal
578.26 Vietnam Service Medal
578.27 Southwest Asia Service Medal
578.28 Kosovo Campaign Medal
578.29 Afghanistan Campaign Medal
578.30 Iraq Campaign Medal
578.31 Global War on Terrorism Expeditionary Medal
578.32 Global War on Terrorism Service Medal
578.33 Korea Defense Service Medal
578.34 Armed Forces Service Medal
578.35 Humanitarian Service Medal
578.36 Military Outstanding Volunteer Service Medal
578.37 Army Good Conduct Medal
578.38 Army Reserve Components Achievement Medal
578.39 Army Reserve Components Overseas Training Ribbon
578.40 Overseas Service Ribbon
578.41 Army Service Ribbon
578.42 Noncommissioned Officer Professional Development Ribbon
578.43 Armed Forces Reserve Medal
578.44 Korean Service Medal
578.45 Medal of Humane Action
578.46 Army of Occupation Medal
578.47 World War II Victory Medal
578.48 European-African-Middle Eastern Campaign Medal
578.49 Asiatic-Pacific Campaign Medal
578.50 American Campaign Medal
578.51 Women's Army Corps Service Medal
578.52 American Defense Service Medal
578.53 Army of Occupation of Germany Medal
578.54 World War I Victory Medal
578.55 Service medals and ribbons no longer available for issue
578.56 United States Unit Awards
578.57 Presidential Unit Citation
578.58 Valorous Unit Award
578.59 Meritorious Unit Commendation
578.60 Army Superior Unit Award
578.61 Appurtenances to Military Decorations
578.62 Service ribbons
578.63 Lapel Buttons
578.64 Miniature Decorations
578.65 Supply, Service and Requisition of Medals and Badges
578.66 Original Issue or Replacement
578.67 Manufacture, sale and Illegal possession
578.68 Badges and tabs, general
578.69 Combat Infantryman Badge
578.70 Combat Medical Badge
578.71 Combat Action Badge
578.72 Expert Infantryman Badge
578.73 Expert Field Medical Badge
578.74 Parachutist Badge
578.75 Parachutist Badge-Basic
578.76 Senior Parachutist Badge
578.77 Master Parachutist Badge
578.78 Parachute Rigger Badge
578.79 Military Free Fall Parachutist Badge
578.80 Army Aviator Badge
578.81 Flight Surgeon Badge
578.82 Diver Badge
578.83 Special Operations Diver Badge
578.84 Explosive Ordnance Disposal Badge
578.85 Explosive Ordnance Disposal Badge-Basic
578.86 Senior Explosive Ordnance Disposal Badge
578.87 Master Explosive Ordnance Disposal Badge
578.88 Pathfinder Badge
578.89 Air Assault Badge
578.90 Aviation Badge
578.91 Aviation Badge-Basic
578.92 Senior Aviation Badge
578.93 Master Aviation Badge
578.94 Driver and Mechanic Badge
578.95 Glider Badge (Rescinded)
578.96 Nuclear Reactor Operator Badge (Rescinded)
578.97 Marksmanship Qualification Badge
578.98 Ranger Tab
578.99 Special Forces Tab
578.100 Sapper Tab
578.101 Physical Fitness Badge
578.102 U.S. Civilian Marksmanship Program
578.103 President's Hundred Tab
578.104 Identification Badges
578.105 Presidential Service Badge and Certificate
578.106 Vice Presidential Service Badge and Certificate
578.107 Office of the Secretary of Defense Identification Badge
578.108 Joint Chiefs of Staff Identification Badge
578.109 Army Staff Identification Badge
578.110 Guard, Tomb of the Unknown Soldier Identification Badge
578.111 Army ROTC Nurse Cadet Program Identification Badge
578.112 Drill Sergeant Identification Badge
578.113 U.S. Army Recruiter Identification Badge
578.114 Career Counselor Badge
578.115 Army National Guard Recruiting and Retention Identification Badge
578.116 U.S. Army Reserve Recruiter Identification Badge
578.117 Foreign and International Decorations and Awards to U.S. Army Personnel—General
578.118 Individual Foreign Decorations
578.119 Foreign Unit Decorations
578.120 Foreign Badges
578.121 United Nations Service Medal
578.122 Inter-American Defense Board Medal
578.123 Philippine Defense Ribbon
578.124 Philippine Liberation Ribbon
578.125 Philippine Independence Ribbon
578.126 United Nations Medal
578.127 North Atlantic Treaty Organization Medal
578.128 Multinational Force and Observers Medal
578.129 Republic of Vietnam Campaign Medal
578.130 Kuwait Liberation Medal—Saudi Arabia
578.131 Kuwait Liberation Medal—Kuwait
578.132 Republic of Korea War Service Medal
578.133 Certificates for Decorations
578.134 Certificate of Achievement
578.135 Certificate of Appreciation to Employers
578.136 Certificate for Badges
578.137 Cold War Recognition Certificate

Authority: Sec. 3012, Pub. L. 84–1028, 70A Stat. 157; 10 U.S.C. 3013.

§ 578.1 Purpose.

The primary purpose of the awards program is to provide tangible evidence of public recognition for acts of valor and for exceptional service or achievement. Medals constitute one of the principal forms for such evidence; in the United States Army, medals are of the following categories:

(a) Military decorations are awarded on a restricted individual basis in recognition of and as a reward for heroic, extraordinary, outstanding, and

meritorious acts, achievements, and services; and such visible evidence of recognition is cherished by recipients. Decorations are primarily intended to recognize acts, achievements, and services in time of war.

(b) The Army Good Conduct Medal is awarded in recognition of exemplary behavior, efficiency, and fidelity during enlisted status in active Federal military service.

(c) Service medals are awarded generally in recognition of honorable performance of duty during designated campaigns or conflicts. Award of decorations, and to a lesser degree, award of the Army Good Conduct Medal and of service medals, provide a potent incentive to greater effort, and are instrumental in building and maintaining morale.

§ 578.2 Explanation of terms.

The following definitions are furnished for clarity and uniformity in the determination and award of decorations:

(a) *Above and beyond the call of duty.* Exercise of a voluntary course of action, the omission of which would not justly subject the individual to censure for failure in the performance of duty. It usually includes the acceptance of existing danger or extraordinary responsibilities with praiseworthy fortitude and exemplary courage. In its highest degrees it involves the voluntary acceptance of additional danger and risk of life.

(b) *Active Federal military service.* The term ''active Federal military service'' means all periods of active duty, Active Guard Reserve (AGR) service and, except for service creditable for the Armed Forces Reserve Medal, excludes periods of active duty for training (ADT) and full-time training duty (FTTD). Service as a cadet at the United States Military Academy is considered to be active duty for the purposes of military awards and decorations.

(c) *Active Guard Reserve.* Army National Guard of the U.S. (ARNGUS) and U.S. Army Reserve (USAR) personnel serving on active duty (AD) under 10 U.S.C. and Army National Guard personnel serving on full-time National Guard duty (FTNGD) under 32 U.S.C. These personnel are on FTNGD or AD (other than training) for 180 days or more for the purpose of organizing, administering, recruiting, instructing, or training the Reserve Components and are paid from National Guard Personnel, Army or Reserve Personnel Army appropriations.

(d) *Area of operation.* The foreign territory upon which troops have actually landed or are present and specifically deployed for the direct support of the designated military operation; adjacent water areas in which ships are operating, patrolling, or providing direct support of operations; and the airspace above and adjacent to the area in which operations are being conducted.

(e) *Award.* Recognition given to individuals or units for certain acts or services, or badges, accolades, emblems, citations, commendations, streamers, and silver bands. Also an adjectival term used to identify administrative functions relating to recognition (for example, awards boards, award recommendations, and so forth).

(f) *Award precondition.* Any eligibility criterion not specified by this regulation which must be met before awarding a decoration.

(g) *Biographical sketch.* Identification of an individual that includes as a minimum: Full name, Social Security Number (SSN), date and place of birth, marital status, education, and military service.

(h) *Bravery.* Quality or state showing courage; level of conduct which is expected of professional Army soldiers.

(i) *Combat heroism.* Act or acts of heroism by an individual engaged in actual conflict with an armed enemy, or in military operations which involve exposure to personal hazards, due to direct enemy action or the imminence of such action.

(j) *Combat zone.* The region where fighting is going on; the forward area of the theater of operations where combat troops are actively engaged. It extends from the frontline to the front of the communications zone.

(k) *Decoration.* Distinctively designed mark of honor denoting heroism or meritorious/outstanding service/achievement for individuals and units.

(l) *Direct participation.* ''Hands-on'' activity at the site, or sites, of the military act or operation. The individual must be physically present at the designated location, having contributed to and influenced the action.

(m) *Direct support.* Services being supplied the combat forces in the area of operations by ground units, ships, and aircraft providing supplies and equipment to the forces concerned, provided it involves actually entering the designated area; and ships and aircraft providing fire, patrol, guard, reconnaissance, or other military support.

(n) *Distinguished himself or herself by.* A person to have distinguished himself or herself must, by praiseworthy accomplishment, be set apart from other persons in the same or similar circumstances. Determination of this distinction requires careful consideration of exactly what is or was expected as the ordinary, routine, or customary behavior and accomplishment for individuals of like rank and experience for the circumstances involved.

(o) *Duty of great responsibility.* Duty which, by virtue of the position held, carries the ultimate responsibility for the successful operation of a major command, activity, agency, installation, or project. The discharge of such duty must involve the acceptance and fulfillment of the obligation so as to greatly benefit the interests of the United States.

(p) *Duty of responsibility.* Duty, which by virtue of the positions held, carries a high degree of the responsibility for the successful operation of a major command, activity, agency, installation, or project, or which requires the exercise of judgment and decision affecting plans, policies, operations, or the lives and well being of others.

(q) *Extraordinary heroism.* Act or acts of heroism or gallantry involving the risk of life. Minimum level of valorous performance in combat consistent with a recommendation for the Distinguished Service Cross.

(r) *Foreign Decoration.* Any order, device, medal, badge, insignia, emblem or award, tendered by or received from a foreign government.

(s) *Foreign government.* Includes any unit of a foreign governmental authority, including any foreign national, State, local and municipal Government; any international or multinational organization whose membership is composed of any unit of foreign government described above; and any agent or representative of any such unit or organization while acting as such.

(t) *Gallantry and intrepidity at the risk of life.* Fearless spontaneous conduct at the certain risk of life, above and beyond the call of duty, which clearly sets the soldier apart from all other comrades. Minimum level of valorous performance in combat consistent with a recommendation for the Medal of Honor.

(u) *Gallantry in action.* Spirited and conspicuous acts of heroism and courage. Minimum level of valorous performance in combat consistent with a recommendation for the Silver Star.

(v) *Heroism.* Extreme courage demonstrated in attaining a noble end. Varying levels of documented heroic actions are necessary to substantiate recommendations for the Bronze Star Medal with ''V,'' Air Medal with ''V,'' and the Army Commendation Medal with ''V.''

(w) *In connection with military operations against an armed enemy.* This phrase covers all military operations including combat, support, and supply which have a direct bearing on the outcome of an engagement or engagements against armed opposition. To perform duty or to accomplish an act of achievement in connection with military operations against an armed enemy, the individual must have been subjected either to personal hazard as a result of direct enemy action, or the imminence of such action, or must have had the conditions under which his duty or accomplishment took place complicated by enemy action or the imminence of enemy action.

(x) *Key individual.* A person who is occupying a position that is indispensable to an organization, activity, or project.

(y) *Medal.* A term used to—

(1) Include the three categories of awards, namely: Decorations, Army Good Conduct Medal, and service medals.

(2) Refer to the distinctive physical device of metal and ribbon which constitutes the tangible evidence of an award.

(z) *Meritorious Achievement.* An act which is well above the expected performance of duty. The act should be an exceptional accomplishment with a definite beginning and ending date. The length of time is not a primary consideration; however, speed of accomplishment of an important task can be a factor in determining the value of an act.

(aa) *Meritorious Service.* Service which is distinguished by a succession of outstanding acts of achievement over a sustained period of time. Individual performance must exceed that expected by virtue of grade and experience, based on accomplishments during an entire tour of duty.

(bb) *Military merit.* Demonstrated conduct or character deserving of recognition.

(cc) *Officer.* Except where expressly indicated otherwise, the word ''officer'' means ''commissioned or warrant officer.''

(dd) *Operation.* A military action, or the carrying out of a strategic, tactical, service, training, or administrative military mission; the process of carrying on combat including movement, supply, attack, defense, and maneuvers needed to gain the objectives of any battle or campaign.

(ee) *Outstanding or unusually meritorious performance.* Performance of duty determined by the employing component to have contributed to an unusually significant degree toward the furtherance of good relations between the United States and the foreign government tendering the decoration. This requires that the service be of national significance to the foreign government and that it be performed under exceptionally difficult, extraordinary, or hazardous conditions.

(ff) *Peacetime criteria.* (1) In a period when the United States is not engaged in the prosecution of a formal declared war.

(2) Applied outside a combat zone when the United States is engaged in military operations against an armed enemy, but is not prosecuting a formally declared war, except that in the communications zone those individuals whose duties are in connection with military operations against an armed enemy may be considered under wartime criteria.

(3) A period in specified areas where U.S. troops are engaged in military operations involving conflict with an opposing foreign force or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(gg) *Primary next of kin.* Primary next of kin are, in order of precedence, surviving spouse, eldest child, father or mother, eldest brother or sister, or eldest grandchild.

(hh) *Reserve Components of the Army.* The Army National Guard of the United States and the U.S. Army Reserve.

(ii) *U.S. Individual Army decorations.* U.S. Individual Army decorations are the Medal of Honor, Distinguished Service Cross, Distinguished Service Medal, Silver Star, Legion of Merit, Distinguished Flying Cross, Soldier's Medal, Bronze Star Medal, Purple Heart, Meritorious Service Medal, Air Medal, Army Commendation Medal, and the Army Achievement Medal.

(jj) *U.S. unit decorations.* U.S. unit decorations are the Presidential Unit Citation, Valorous Unit Award, Meritorious Unit Commendation, and Army Superior Unit Award.

(kk) *Valor.* Heroism performed under combat conditions.

(ll) *Wartime criteria.* (1) A period of formally declared war and for 1 year after the cessation of hostilities.

(2) A period of military operations against an armed enemy and for 1 year after cessation of hostilities. Only those individuals actually in the combat zone or those in the communications zone whose duties involve direct control or support of combat operations are to be considered under wartime criteria.

(3) A period of national emergency declared by the President or by the Congress.

§ 578.3 Display sets of award elements and the Medal of Honor.

(a) *Government agencies.* Upon approval by the Secretary of the Army, samples of military decorations may be furnished, without charge, for one display at the headquarters of each Army and higher field commander, in the offices of the chiefs of governmental agencies not under military jurisdiction where opportunity for the public to view the display is assured, and in each office of Headquarters, Department of the Army (HQDA) with activities that include matters pertaining to decorations.

(b) *Civilian institutions.* Upon approval by the Secretary of the Army, samples of military decorations may be furnished, at cost price, to museums, libraries, and to national headquarters of historical, numismatic, and military societies; and to institutions of such public nature as will assure an opportunity for the public to view the exhibits under circumstances beneficial to the Army. All decorations furnished to civilian institutions for exhibition purposes will be engraved with the words, ''For Exhibition Purposes only.''

(c) *Requests.* Letter requests for decorations for exhibit or display will be made to Commander, U.S. Army Human Resources Command (USA HRC), ATTN: AHRC–PDO–PA, 200 Stovall Street, Alexandria, VA 22332–0471.

(d) *Display.* Service medals for service prior to World War II will not be provided for display purposes since only minimum essential quantities are available for issue to authorized recipients.

(e) *Purchase of medals.* Except for the Medal of Honor, all other decorations, service medals, and ribbons can be purchased from private vendors who have been issued a certificate of authority by the Institute of Heraldry. A list of certified vendors can be obtained from HQ, USA HRC (see § 578.3 (c)).

(f) *Display sets of the Medal of Honor.* Upon written requests, The Adjutant General of the Army can approve issue of a display Medal of Honor to government agencies (defined in paragraphs (a) and (b) of this section). Adequate security arrangement must be provided for the medal so that it will not be lost through vandalism or theft. Maximum exposure of the medal to the public must be ensured, on a free of charge basis, under circumstances beneficial to the Army.

§ 578.4 U.S. Military Decorations.

To whom awarded, see Table 1 below.

TABLE 1

Decorations listed in order of precedence	Awarded for:		Awarded to:			
	Heroism	Achievement or service	Military		Civilian	
			United States	Foreign	United States	Foreign
Medal of Honor	Combat	N/A	War (1)	N/A	N/A	N/A.
Distinguished Service Cross.	Combat	N/A	War	War	N/A	N/A.
Distinguished Service Medal.	War	War & Peace	War & Peace	War & Peace	War (2)	War (2).
Sliver Star	Combat	N/A	War	War	War (2)	War (2).
Legion of Merit	N/A	War & Peace	War & Peace	War & Peace (5)	N/A	N/A.
Distinguished Flying Cross	Combat Non-combat.	War & Peace (4)	War & Peace	War	N/A	N/A.
Soldier's Medal	Noncombat	N/A	War & Peace (4)	War & Peace (4)	N/A	N/A.
Bronze Star Medal	Combat (3)	War & Peace (4)	War & Peace (4)	War & Peace(4)	N/A	N/A.
Purple Heart	For wounds received as the result of hostile action.	N/A	War & Peace (7, 8).	N/A	N/A	N/A.
Meritorious Service Medal	N/A	Peace & War (9)	Peace	Peace	N/A	N/A.
Air Medal	Combat (3) Non-combat.	War & Peace (4)	War & Peace (4)	War	War (2)	War (2).
Army Commendation Medal.	Combat (3) Non-combat.	War Peace	War & Peace (6)	War & Peace (6)	N/A	N/A.
Army Achievement Medal	N/A	Peace & War (6, 9).	Peace (6)	Peace (6)	N/A	N/A.

Notes:
1. The Medal of Honor is awarded only to U.S. military personnel.
2. Under limited circumstances. Recommendations will be forwarded to HQ, USA HRC for processing.
3. Awarded with Bronze "V" Device for valor in combat.
4. Awarded for peacetime when no formal war has been declared but the U.S. is engaged in military operations against an armed enemy.
5. Awarded to foreign military personnel in one of four degrees.
6. Not awarded to general officers.
7. Awarded to military personnel wounded by terrorists or while members of a peacekeeping force.
8. Approval authority is the Secretary of the Army.
9. Authorized for award in a combat theater for non-combat meritorious service and achievement.

§ 578.5 Award Recommendations.

(a) It is the responsibility and privilege of any individual having personal knowledge of an act, achievement, or service believed to warrant the award of a decoration to submit a recommendation for consideration. It is usually desirable that the intended recipient not be informed of a pending recommending or given an implied promise of an award prior to final approval and clearance. This is especially true when the intended recipient is a foreigner.

(b) The Department of the Army (DA) Form 638 (Recommendation for Award) will be used to initiate, process and approve award recommendations of all U.S. Army individual decorations, to include valor and heroism decorations.

(c) Narrative description of meritorious service or achievement for awards of the Meritorious Service Medal (MSM), Army Commendation Medal (ARCOM), and Army Achievement Medal (AAM) will be limited to bullet format in the space allowed on the DA Form 638. Bullet format or narratives may be used for the Legion of Merit (LM). Narratives are required for all other awards and will be added as an addendum to the recommendation. Narrative should be prepared on 8½ by 11-inch bond paper and is limited to one double-spaced typewritten pages except for recommendations of the Distinguished Service Medal and above. Narratives for valor must contain a description of the following elements: Terrain and weather of the area in which the action took place; enemy conditions, to include morale, proximity, firepower, casualties and situation prior to, during and after the act; the effect of the act on the enemy; the action of comrades in the immediate vicinity of the act and the degree of their participation in the act; if the act occurred in aerial flight, the type and position of the aircraft and the individual's crew position; the degree to which the act was voluntary; the degree to which the act was outstanding and exceeded what was normally expected of the individual; all unusual circumstances; and overall effects or results of the act.

(d) Heroism award recommendations will contain statements of eyewitnesses, preferably in the form of certificates, affidavits, or sworn statements; extracts from official records; sketches; maps; diagrams; photographs; and so forth, which support and amplify stated facts for the heroism award.

(e) Recommendations will be forwarded through command channels to the commander authorized to approve or disapprove it. Each intermediate commander/supervisor will recommend approval or disapproval, and cite specific reasons whenever disapproval is recommended.

(f) Except for the provisions of 10 U.S.C. 1130 outlined in paragraph (g) of this section and lost awards, each recommendation for an award of a military decoration must be entered administratively into military channels within 2 years of the act, achievement, or service to be honored. Submission into military channels is defined as "signed by the initiating official and

endorsed by a higher official in the chain of command.''

(g) Pursuant to 10 U.S.C. 1130, a Member of Congress can request consideration of a proposal for the award or presentation of decoration (or the upgrading of a decoration), either for an individual or unit, that is not otherwise authorized to be presented or awarded due to limitations established by law or policy. Based upon such review, the Secretary of the Army shall make a determination as to the merits of approving the award or presentation of the decoration and other determinations necessary to comply with congressional reporting under 10 U.S.C. 1130.

§ 578.6 Wartime Criteria.

Wartime criteria, by whom awarded. The Medal of Honor is awarded only by the President. Other decorations are awarded by the President, the Secretary of Defense, and the Secretary of the Army. When wartime conditions erupt, authority to further delegate decorations approval authority will be requested from the Secretary of the Army. Initial delegation will be requested consistent with the award approval authority outlined in Table 2 below.

TABLE 2.—DELEGATION OF AWARD APPROVAL—WARTIME CRITERIA

[The primary purpose of this table is to outline the various awards and decorations approval authorities for use during the immediate stages of Army combat operations. Once delegation, this authority is reviewed every 30, 60 or 90 days during combat operations to determine if further delegation is expedient and justified. Wartime delegation if withdrawn from approval authorities upon redeployment of the unit. This table is not absolute and is subject to change as necessary by the Secretary of the Army. Award approval levels outlined in Table 3 are applicable to Table 2.]

Awards	Approval authority	May further delegate	Awarded to
Medal of Honor	President of the United States	N/A	U.S. military personnel.
DSC & all lesser decorations	Secretary of the Army or others as designated by the Secretary of the Army.	N/A	a. U.S. Army Active and Reserve Component personnel. b. U.S. Navy, Marine Corps, Air Force, and Coast Guard personnel with concurrence of the appropriate Service Secretary.
DSC, SS, LM, DFC and SM	CG of a U.S. Army Force (Serving in the rank of General) (see note 1).	MG and BG commanders (BG must be serving in MG position), commanders of separate units, may award the BSM, AM, and ARCOM (see note 2).	U.S. Army personnel and members of the other armed services and members of the armed forces of friendly foreign nations in the ranks comparable to the grade of O–6 (COL) or lower provided concurrence is obtained from that Service or foreign government.
BSM, AM, ARCOM	Senior Army Commander and commanders of a separate force serving in the rank of LTG (see note 1).	MG and BG (serving in MG positions) commanders of separate units, may award the BSM, AM and ARCOM (see note 2).	U.S. Army personnel and members of the armed forces of friendly foreign nations in the ranks comparable to the grade of 0–6 (COL) and below, provided concurrence is obtained from that Service or foreign government.
PH	CG of any separate unit and Hospital commanders receiving casualties.	To any field grade commander who has orders issuing authority.	Member of the Army and member of other Services provided concurrence is obtained from that Service.
PUC, VUA, MUC	As provided in § 578–57; § 578–58 and § 578–59.	Not further delegated	U.S. units and foreign allied units (see § 578–57; § 578–58; and § 578–59.
Campaign Participation Credit	Senior Army commander serving in the rank of LTG or higher.	Not further delegated	Only to eligible U.S. Army units and RC units called to active duty.
Assault landing Credit	Senior Army Commander serving in the rank of LTG or higher.	Not further delegated	Only to eligible U.S. Army units and RC units called to Active duty. (DA General Orders Issued).
Combat Badges	Commanding General of any separate unit.	To any field grade commander who has orders issuing authority.	See § 578.69, § 578,70, § 578.71, § 578.72, § 578–74, § 578–79, § 578–84 and § 578–99 for specific eligibility requirements for combat badges. See also Table 9 on who may be awarded these badges.

Notes:

1. The senior Army commander (SAC) upon arrival in the theater of operations, or as soon thereafter as practical, will submit a request to CDR, USA HRC (see § 578.3 (c)), requesting this delegation be activated.
2. Authority to approve award of the ARCOM under wartime criteria may be delegated to Colonel level commanders.

§ 578.7 Peacetime criteria.

Peacetime criteria, by whom awarded. Awards for peacetime service are made by the President, the Secretary of Defense, and the Secretary of the Army. When peacetime criteria apply, authority to award decorations is automatically delegated as shown in Table 3 below.

TABLE 3.—DELEGATION OF AWARD APPROVING AUTHORITY-PEACETIME CRITERIA

Commanders and principal HQDA agency officials	May award	To
Chief of Staff, U.S. Army	DSM and all lesser decorations	All U.S. Army personnel and personnel of other Services (see note 2).
General	LM, MSM, ARCOM, and AAM	1. U.S. Army personnel. 2. U.S. Navy, Marine Corps, and Air Force Personnel below brigadier general attached to their organizations (see note 2).
Lieutenant General	LM	1. U.S. Army personnel upon retirement or for posthumous awards only (except general grade officers).
	MSM, ARCOM, and AAM	2. U.S. Army personnel assigned and attached for duty to their command or agency. 3. U.S. Navy, Marine Corps, and Air Force Personnel below brigadier general attached to their organizations (see note 2).
Major General	LM (see note 1)	1. U.S. Army personnel assigned and attached for duty to their command or agency.
	MSM, ARCOM, & AAM	2. U.S. Navy, Marine Corps, and Air Force Personnel below brigadier general attached to their organizations (see note 2).
Brigadier General	MSM, ARCOM, AAM	1. U.S. Army personnel assigned and attached for duty to their command or agency. 2. U.S. Navy, Marine Corps, and Air Force Personnel below brigadier general attached to their organizations (see note 2).
Colonel	ARCOM, AAM	1. U.S. Army personnel assigned and attached for duty to their command or agency. 2. U.S. Navy, Marine Corps, and Air Force Personnel below brigadier general attached to their organizations (see note 2).
Lieutenant Colonel	AAM	1. U.S. Army personnel assigned and attached for duty to their command. 2. U.S. Navy, Marine Corps, and Air Force Personnel below brigadier general attached to their organizations (see note 2).
Project Managers, Program Managers, Product Managers, and Program Executive Officers:		
Major Generals and civilian equivalent Senior Executive Service (SES).	MSM, ARCOM and AAM	Service members assigned to their projects (see note 2).
Brigadier Generals and civilian equivalent SES.	MSM, ARCOM and AAM	Service members assigned to their projects (see note 2).
Colonels and civilian equivalent General Schedule (GS) 15.	ARCOM and AAM	Service members assigned to their projects (see note 2).
Lieutenant Colonels	AAM	Service members assigned to their projects (see note 2).

Notes:

[1] Major Army commanders and officials of principal HQDA agencies in the grade of Major General have authority to approve awards of the Legion of Merit, to retiring and deceased persons, other than general officers, assigned to their commands or agencies.

[2] See paragraph 1–36, AR 600–8–22 for instructions on awarding Army decorations to members of the other U.S. Services.

§ 578.8 General Rules.

(a) *Awards for civilian service.* Awards for DA civilians are governed by Army Regulation (AR) 672–20, Incentive Awards. AR 672–20 provides implementing instructions for incentive awards, honorary awards and devices, awards from nonfederal organizations, and medals for public service.

(b) *Posthumous awards.* Awards may be made following the death of the person being honored in the same manner as they are made for a living person except that the orders and citation will indicate that the award is being made posthumously. The engraved medal and certificate will not contain the word posthumous. Orders announcing the award, together with the certificate, medal, citation and related documents will be forwarded to the appropriate commander for presentation. Eligible classes of next of kin are listed in the order of their precedence in § 578.2 (gg).

(c) *Interim awards and awards of a lesser decoration.* (1) To ensure that a deserving act, achievement, or service receives recognition, the appropriate authority may promptly award a suitable lesser military decoration pending final action on a recommendation for a higher award, except for retiring U.S. Army general officers. When a higher award is approved, the approving authority will revoke the interim award in the same orders published for the higher award. The decoration will be returned by the recipient, unless the higher award is approved posthumously, in which case the next of kin will be permitted to retain both awards.

(2) The authority taking final action may award the decoration recommended, award a lesser decoration (or consider the interim award as adequate recognition), or in the absence of an interim award, disapprove award of any decoration.

(d) *Duplication of awards.* (1) Only one decoration will be awarded to an individual or unit for the same act, achievement, or period of meritorious service.

(2) The award of a decoration in recognition of a single act of heroism or meritorious achievement does not preclude an award for meritorious service at the termination of an

assignment. Recommendations for award of a decoration for meritorious service will not refer to acts of heroism or meritorious achievements, which have been previously recognized by award or decoration.

(3) Continuation of the same or similar type service already recognized by an award for meritorious service or achievement will not be the basis for a second award. If appropriate, an award may be made to include the extended period of service by superseding the earlier award, or the award previously made be amended to incorporate the extended period service.

(e) *Conversion of awards.* Awards of certain decorations (Silver Star, Bronze Star Medal, Purple Heart, and Army Commendation Medal) on the basis of existing letters, certificates, and/or orders, as hereinafter authorized will be made only upon letter application of the individuals concerned to the National Personnel Records Center (NPRC), 9700 Page Avenue, St. Louis, MO 63132–5100 (Soldiers who retired or were discharged on or after October 1, 2002 should send their requests to the Commander, U.S. Army Human Resources Command, St. Louis, ATTN: AHRC–CC–B, 1 Reserve Way, St. Louis, MO 63132–5200).

(f) *Character of service.* No decoration shall be awarded or presented to any individual whose entire service subsequent to the time of the distinguished act, achievement, or service shall not have been honorable. The Act of July 9, 1918 (40 Stat. 871) as amended (10 U.S.C. 1409); the Act of July 2, 1926 (44 Stat. 789), as amended (10 U.S.C. 1429)

(g) *Time limitations.* (1) Except for the provisions of 10 U.S.C. 1130 and lost awards addressed below, each recommendation for an award of a military decoration must be entered administratively into military channels within 2 years of the act, achievement, or service to be honored. Submission into military channels is defined as ''signed by the initiating official and endorsed by a higher official in the chain of command.''

(2) Pursuant to 10 U.S.C. 1130, a Member of Congress can request consideration of a proposal for the award or presentation of decoration (or the upgrading of a decoration), either for an individual or unit, that is not otherwise authorized to be presented or awarded due to limitations established by law or policy. Based upon such review, the Secretary of the Army shall make a determination as to the merits of approving the award or presentation of the decoration and other determinations necessary to comply with congressional reporting under 10 U.S.C. 1130.

(3) To be fully effective, an award must be timely. Undue delay in submitting a recommendation may preclude its consideration. It is highly desirable that a recommendation be placed in military channels and acted upon as quickly as possible. If circumstances preclude submission of a completely documented recommendation, it is best to submit it as soon as possible and note that additional data will be submitted later. However, to ensure prompt recognition, interim awards should be considered and are encouraged as addressed above.

(4) No military decoration, except the Purple Heart and exceptions for decorations approved under 10 U.S.C. 1130, will be awarded more than 3 years after the act or period of service to be honored.

(5) These time limitations do not apply to retroactive and conversion awards made in confirmation of recognition of previously issued orders, letters, or certificates or in exchange of decorations hereinafter authorized.

(6) In cases where it can be conclusively proven that formal submission of a recommendation for award was not made within the time limitations indicated above, because either the person recommending or the person being recommended was in a prisoner of war (POW), missing in action (MIA) or in a medically incapacitated status, award of the Silver Star or lesser decorations may be approved without regard to elapsed time since the act, achievement, or service occurred, that is to be honored.

(7) If the Secretary of the Army determines that a statement setting forth the distinguished act, achievement, or service, and a recommendation for official recommendation recognition was made and supported by sufficient evidence within 2 years after the distinguished service, and that no award was made because the statement was lost, or through inadvertence the recommendation was not acted upon; he or she may, within 2 years after the date of the determination, award any appropriate military decoration. In each case, the following will be provided:

(i) Conclusive evidence of the formal submission of the recommendation into military channels.

(ii) Conclusive evidence of the loss of the recommendation or the failure to act on the recommendation through inadvertence.

(iii) A copy of the original recommendation, or its substantive equivalent. As a minimum, the recommendation should be accompanied by statements, certificates, or affidavits corroborating the events or services involved. It is emphasized that the proponent must provide Commander, USA HRC (see § 578.3(c)), with adequate information for Secretarial evaluation of the deed or service to determine if an award is to be made. The person signing a reconstructed award recommendation must be identified clearly in terms of his or her official relationship to the intended recipient at the time of the act or during the period of service to be recognized.

(h) *U.S. awards to foreign military personnel.* (1) It is the Department of Defense (DOD) policy to recognize individual acts of heroism, extraordinary achievement or meritorious achievement on the part of service members of friendly foreign nations when such acts have been of significant benefit to the United States or materially contributed to the successful prosecution of a military campaign by Armed Forces of the United States. Such acts or achievement shall be recognized through the award of an individual U.S. decoration.

(2) U.S. campaign and service medals shall not be awarded to members of foreign military establishments.

(3) Foreign military personnel in ranks comparable to the grade of O–6 and below, at the time the act was performed and at the time the decoration is presented, may be awarded the following decorations: Silver Star; Distinguished Flying Cross; Bronze Star Medal; or the Air Medal for valorous acts in actual combat in direct support of military operation; the Soldier's Medal, for heroic acts in direct support of operations, but not involving actual combat; and the Legion of Merit (see § 578.13 for the Legion of Merit to foreign military personnel).

(i) *Announcement of awards.* (1) Decorations and the Army Good Conduct Medal.

(i) Awards made by the President, the Secretary of Defense, and the Secretary of the Army will be announced in DA General Orders (DAGO).

(ii) Awards of decorations and the Army Good Conduct Medal made by principal HQDA officials will be announced in permanent orders.

(iii) Awards of decorations and the Army Good Conduct Medal made according to delegated authority will be announced in permanent orders by the commanders authorized to make the awards.

(2) *Service medals and service ribbons.* Service medals and service ribbons are administratively awarded to

individuals who meet the qualifying criteria. Orders are not required.

(3) *Badges*. Permanent awards of badges, except basic marksmanship qualification badges, identification badges, and the Physical Fitness Badge will be announced in permanent orders by commanders authorized to make the award or permanent orders of HQDA.

(j) *Engraving of awards*. The grade, name, and organization of the awardee are engraved on the reverse of the Medal of Honor. The name only of the awardee is engraved on the reverse side of every other decoration, the POW Medal and the Army Good Conduct Medal. Normally engraving will be accomplished prior to presentation. When this is impracticable, the awardee will be informed that he or she may mail the decoration or Army Good Conduct Medal to the Commander, U.S. Army TACOM, Clothing and Heraldry Product Support Integration Directorate (PSID), P.O. Box 57997, Philadelphia, PA 19111–7997, for engraving at Government expense.

(k) *Presentation of decorations*. (1) The Medal of Honor is usually presented to living awardees by the President of the United States at the White House. Posthumous presentation to the next of kin normally is made in Washington, DC by the President or his or her personal representative.

(2) Other U.S. military decorations will be presented with an appropriate air of formality and with fitting ceremony.

(3) Foreign decorations will not be presented by members of the U.S. Army to designated recipients whether awardees or next of kin.

(4) Conversion awards, service medals, and service ribbons usually are not presented with formal ceremony. However, such presentation may be made at the discretion of the local commander.

(5) Whenever practical, badges will be presented to military personnel in a formal ceremony as provided in Field Manual (FM) 3–21.5. Presentations should be made as promptly as practical following announcement of awards, and when possible, in the presence of the troops with whom the recipients were serving at the time of the qualification.

(6) Presentation of the Army Good Conduct Medal to military personnel may be made at troop formations. (See FM 3–21.5.) Ceremonies will not be conducted to present the Army Good Conduct Medal to former military personnel or next of kin.

(7) The Army Lapel Button will be formally presented at troop formations or other suitable ceremonies. The U.S. Army Retired Lapel Button will be presented at an appropriate ceremony prior to their departure for retirement. These buttons may be presented to a separating soldier at the same time as the Army Good Conduct Medal and any other approved decoration.

(l) *Act of presentation*. In the act of presentation, a decoration may be pinned on the clothing of the awardee whether in uniform or civilian clothing or on the next-of-kin in the case of a presentation following the recipient's death; however, this will not be construed as authority to wear the decoration for any person other than the individual honored. As an alternative to pinning the decoration, especially on next-of-kin, it may be handed to the recipient in an opened decoration container.

§ 578.9 Medal of Honor.

(a) *Criteria*. The Medal of Honor (10 U.S.C. 3741) was established by Joint Resolution of Congress, July 12, 1962 (amended by Act of July 9, 1918 and Act of July 25, 1963) is awarded by the President in the name of Congress to a person who, while a member of the Army, distinguished himself or herself conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty while engaged in an action against an enemy of the United States; while engaged in military operations involving conflict with an opposing foreign force; or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party. The deed performed must have been one of personal bravery or self-sacrifice so conspicuous as to clearly distinguish the individual above his comrades and must have involved risk of life. Incontestable proof of the performance of the service will be exacted and each recommendation for the award of this decoration will be considered on the standard of extraordinary merit. Eligibility is limited to members of the Army of the United States in active Federal military service.

(b) *Description*. A gold-finished bronze star, one point down, 1 9/16 inches in diameter with rays terminating in trefoils, surrounded by a laurel wreath in green enamel, suspended by two links from a bar bearing the inscription ''Valor'' and surmounted by an eagle grasping laurel leaves in one claw and arrows in the other. In the center of the star is the head of Minerva surrounded by the inscription ''United States of America.'' Each ray of the star bears an oak leaf in green enamel. On the reverse of the bar are stamped the words ''The Congress To.'' The medal is suspended by a hook to a ring fastened behind the eagle. The hook is attached to a light-blue moired silk neckband, 1 3/16 inches in width and 21 3/4 inches in length, behind a square pad in the center made of the ribbon with the corners turned in. On the ribbon bar are 13 white stars arranged in the form of a triple chevron, consisting of two chevrons of 5 stars and one chevron of 3 stars. A hexagonal rosette of light-blue ribbon 1/2 inch circumscribing diameter, with a fan-shaped ribbon insert showing white stars, is included for wear on civilian clothing.

(c) *Medal of Honor Roll*. The Medal of Honor Roll was established by Act of Congress, April 27, 1916, as amended by 38 U.S.C. 1562. It provides that each Medal of Honor awardee may have his or her name entered on the Medal of Honor Roll. Each person whose name is placed on the Medal of Honor Roll is certified to the Veterans Administration as being entitled to receive a special pension of $1000 per month for life, if the person desires. Payment will be made by the Veterans Administration beginning as of the date of application thereof (38 U.S.C. 1562). The payment of this special pension is in addition to, and does not deprive the pensioner of any other pension, benefit, right, or privilege to which he or she is or may thereafter be entitled. The awardee will submit a DD Form 1369 (Application for Enrollment on the Medal of Honor Roll and for the Pension Authorized by the Act of Congress) to have his or her name placed on the Medal of Honor Roll and to receive the special pension. The application will bear the full personal signature of the awardee, or in cases where the awardee cannot sign due to disability or incapacity, the signature of the awardee's legally designated representative, and be forwarded to Commander, USA HRC (see § 578.3(c)). Applicant will receive a DD Form 1370A (Certificate of Enrollment on the Medal of Honor Roll).

(d) *Additional benefits*. (1) Supplemental uniform allowance. Enlisted recipients of the Medal of Honor are entitled to a supplemental uniform allowance. (See AR 700–84.)

(2) Air transportation for Medal of Honor awardees. (See DOD Regulation 4515.13–R.)

(3) Commissary privileges for Medal of Honor recipients and their eligible family members. (See AR 600–8–14.)

(4) Identification cards for Medal of Honor recipients and their eligible family members. (See AR 600–8–14.)

(5) Admission to U.S. Service Academies. Children of Medal of Honor awardees, otherwise qualified, are not

subject to quota requirements for admission to any of the U.S. Service Academies. (See U.S. Service Academies annual catalogs.)

(6) Exchange privileges for Medal of Honor recipients and their eligible family members. (See AR 600–8–14.)

(7) Burial honors for Medal of Honor recipients are identical to those who become deceased while on active duty. (See AR 600–8–1 and AR 600–25.)

§ 578.10 Distinguished Service Cross.

(a) *Criteria.* The Distinguished Service Cross was established by Act of Congress July 9, 1918 (amended by Act of July 25, 1963), 10 U.S.C. 3742. It is awarded to a person who, while serving in any capacity with the Army, distinguishes himself or herself by extraordinary heroism not justifying the award of a Medal of Honor while engaged in an action against an enemy of the United States; while engaged in military operations involving conflict with an opposing force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing Armed Force in which the United States is not a belligerent party. The act or acts of heroism must have been so notable and have involved risk of life so extraordinary as to set the individual apart from his comrades.

(b) *Description.* A cross of bronze 2 inches in height and 1 13/16 inches in width with an eagle on the center and a scroll below the eagle bearing the inscription ''For Valor.'' On the reverse, the center of the cross is circled by a wreath. The cross is suspended by a ring from moired silk ribbon, 1 3/8 inches in length and 1 3/8 inches in width, composed of a band of red (1/8-inch), white (1/16-inch), blue (1-inch), white (1/16-inch), and red (1/8-inch). (Sec. 3742, 70A Stat. 215; 10 U.S.C. 3742).

§ 578.11 Distinguished Service Medal.

(a) *Criteria.* (1) The Distinguished Service Medal was established by Act of Congress on July 9, 1918 (10 U.S.C. 3743). It is awarded to any person who, while serving in any capacity with the U.S. Army, has distinguished himself or herself by exceptionally meritorious service to the Government in a duty of great responsibility. The performance must be such as to merit recognition for service which is clearly exceptional. Exceptional performance of normal duty will not alone justify an award of this decoration.

(2) For service not related to actual war the term ''duty of great responsibility'' applies to a narrower range of positions than in time of war and requires evidence of conspicuously significant achievement. However, justification of the award may accrue by virtue of exceptionally meritorious service in a succession of high positions of great importance.

(3) Awards may be made to persons other than members of the Armed Forces of the United States for wartime services only, and then only under exceptional circumstances with the express approval of the President, in each case.

(b) *Description.* The coat of arms of the United States in bronze surrounded by a circle of dark-blue enamel 1 1/2 inches in diameter, bearing the inscription ''For Distinguished Service MCMXVIII.'' On the reverse, a blank scroll upon a trophy of flags and weapons. The medal is suspended by a bar from a moired silk ribbon, 1 3/8 inches in length and 1 3/8 inches in width, composed of a bank of scarlet (5/8-inch), a stripe of dark-blue (1/16-inch), a band of white (5/8-inch), a stripe of dark-blue (1/16-inch), and a band of scarlet (5/16-inch). (Sec. 3743, 70A Stat. 216; 10 U.S.C. 3743).

§ 578.12 Silver Star.

(a) *Criteria.* The Silver Star was established by Act of Congress July 9, 1918 (amended by Act of July 25, 1963, 10 U.S.C. 3746). It is awarded to a person who, while serving in any capacity with the U.S. Army, is cited for gallantry in action against an enemy of the United States while engaged in military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party. The required gallantry, while of lesser degree than that required for the Distinguished Service Cross, must nevertheless have been performed with marked distinction. It is also awarded upon letter application to Commander, USA HRC (see § 578.3 (c)), to those individuals who, while serving in any capacity with the U.S. Army, received a citation for gallantry in action in World War I published in orders issued by a headquarters commanded by a general officer.

(b) *Description.* A bronze star 1 1/2 inches in circumscribing diameter. In the center thereof is a 3/16-inch diameter raised silver star, the center lines of all rays of both stars coinciding. The reverse has the inscription ''For Gallantry in Action.'' The star is suspended by a rectangular-shaped metal loop with corners rounded from a moired silk ribbon 1 3/8 inches in length and 1 3/8 inches in width, composed of stripes of blue (3/32-inch), white (3/64-inch), blue (7/32-inch), white (7/32-inch), red (7/32-inch), white (7/32-inch), blue (7/32-inch), white (3/64-inch), and blue (3/32-inch). (Sec. 3746, 70A Stat. 216; 10 U.S.C. 3746).

§ 578.13 Legion of Merit.

The Legion of Merit was established by Act of Congress July 20, 1942 (10 U.S.C. 1121). It is awarded to any member of the Armed Forces of the United States or of a friendly foreign nation who has distinguished himself or herself by exceptionally meritorious conduct in the performance of outstanding services and achievement.

(a) *Criteria for members of Armed Forces of the United States.* The performance must have been such as to merit recognition of key individuals for service rendered in a clearly exceptional manner. Performance of duties normal to the grade, branch, specialty, or assignment, and experience of an individual is not an adequate basis for this award.

(b) For service not related to actual war, the term ''key individuals'' applies to a narrower range of positions than in time of war and requires evidence of significant achievement. In peacetime, service should be in the nature of a special requirement or of an extremely difficult duty performed in an unprecedented and clearly exceptional manner. However, justification of the award may accrue by virtue of exceptionally meritorious service in a succession of important positions.

(c) Awards will be made without reference to degree.

(d) *Criteria for members of the Armed Forces of foreign nations.* The LM in the degrees described below, may be awarded to foreign military personnel who distinguish themselves by ''exceptional meritorious conduct in performance of outstanding service'' to the United States in accordance with Executive Order (E.O.) 9260.

(e) The LM awarded to members of the Armed Forces of foreign nations is awarded in the following degrees:

(1) *Chief Commander:* A domed five-pointed American white star plaque of heraldic form bordered in purplish-red enamel 2 15/16 inches circumscribing diameter with 13 white stars on a blue field emerging from a circle of clouds; backing the star, a laurel wreath with pierced, crossed arrows pointing outward between each arm of the star and the wreath. The reverse is engraved with the words ''United States of America.''

(2) *Commander:* A five-pointed American white star of heraldic form bordered in purplish-red enamel 2 1/4-inches circumscribing diameter with 13 white stars on a blue field emerging

from a circle of clouds; backing the star, a laurel wreath with pierced, crossed arrows pointing outward between each arm of the star and the wreath. A bronze wreath connects an oval suspension ring to a neck ribbon. The reverse of the five-pointed star is enameled in white bordered in purplish-red enamel; in the center is a disk surrounded by the words ''Annuit Coeptis'' and ''MDCCLXXXII,'' and on the scroll are the words ''United States of America.'' The moired silk neck ribbon is 21¼ inches in length and 1 15/16 inches in width composed of a bank of purplish-red (1 13/16-inches) with edges of white (1/16-inch).

(3) *Officer:* A five-pointed American white star of heraldic form bordered in purplish-red enamel 1⅞-inches circumscribing diameter with 13 white stars on a blue field emerging from a circle of clouds; backing the star, a laurel wreath with modeled, crossed arrows pointing outward between each arm of the star and the wreath, and an all-bronze device of the same design as the pendant ¾ inch in diameter on the center of the suspension ribbon. On the reverse is a disk surrounded by the words ''Annuit Coeptis'' and ''MDCCLXXXII,'' and on the scroll are the words ''United States of America.'' The pendant is suspended by a moired silk ribbon 1⅞ inches in length and 1⅜ inches in width, composed of a bank of purplish-red (1¼-inches) with edges of white (1/16-inch).

(4) *Legionnaire:* Same as prescribed in paragraph (e)(3) of this section, except the all-bronze device is not worn on the ribbon. (Sec. 1121, 70A Stat. 88; 10 U.S.C. 1121, E.O. 9260, October 29, 1942, 7 FR 8819, 3 CFR, 1943 Cum. Supp.)

§ 578.14 Distinguished Flying Cross.

(a) *Criteria.* The Distinguished Flying Cross was established by Act of Congress July 2, 1926, (10 U.S.C. 3749). It is awarded to any person who, while serving in any capacity with the Army of the United States, distinguished himself or herself by heroism or extraordinary achievement while participating in aerial flight. The performance of the act of heroism must be evidenced by voluntary action above and beyond the call of duty. The extraordinary achievement must have resulted in an accomplishment so exceptional and outstanding as to clearly set the individual apart from his comrades, or from other persons in similar circumstances. Awards will be made only to recognize single acts of heroism or extraordinary achievement and will not be made in recognition of sustained operational activities against an armed enemy.

(b) *Description.* On a bronze 1½-inch cross pattee, a four-bladed propeller 1 11/16 inches across the blades; in the reentrant angles, rays forming a 1-inch square. The cross is suspended by a plain, straight link from a moired silk ribbon 1⅜ inches in length and 1⅜ inches in width, composed of stripes of blue (7/64-inches), white (9/64-inch), blue (11/32-inch), white (3/64-inch), red (3/32-inch), white (3/64-inch), blue (11/32-inch), white (9/64-inch), and blue (7/64-inch). (Sec. 3749, 70A Stat. 217; 10 U.S.C. 3749, E.O. 4601, March 1, 1927, as amended by E.O. 7786, January 8, 1938, 3 FR 39).

§ 578.15 Soldier's Medal.

(a) *Criteria.* The Soldier's Medal was established by Act of Congress July 2, 1926, (10 U.S.C. 3750). It is awarded to any person of the Armed Forces of the United States or of a friendly foreign nation who, while serving in any capacity with the Army of the United States, including Reserve Component soldiers not serving in a duty status, as defined in 10 U.S.C. 101(d), at the time of the heroic act, who distinguished himself or herself by heroism not involving actual conflict with an enemy. The same degree of heroism is required as that for an award of the Distinguished Flying Cross. The performance must have involved personal hazard or danger and the voluntary risk of life under conditions not involving conflict with an armed enemy. Awards will not be made solely on the basis of having saved a life.

(b) *Description.* On a 1⅜-inch bronze octagon, an eagle displayed, standing on a fasces, between two groups of stars of six and seven, above the group of six a spray of leaves. On the reverse is a shield paly of 13 pieces on the chief, the letters ''U.S.'' supported by sprays of laurel and oak, around the upper edge the inscription ''Soldier's Medal,'' and across the face the words ''For Valor.'' The medal is suspended by a rectangular-shaped metal loop with corners rounded from a moired silk ribbon 1⅜ inches in length and 1⅜ inches in width, composed of two outside stripes of blue (⅜-inch), the center containing 13 white and red stripes of equal width (7 white and 6 red). (Sec. 3750, 70A Stat. 217; 10 U.S.C. 3750).

§ 578.16 Bronze Star Medal.

(a) *Criteria.* The Bronze Star Medal was established by Executive Order 9419, February 4, 1944 (superseded by E.O. 11046, August 24,1962 and amended by 10 U.S.C. 1133). It is awarded to any person who, while serving in any capacity in or with the Army of the United States after December 7, 1941, distinguished himself or herself by heroic or meritorious achievement or service, not involving participation in aerial flight, in connection with military operations against an armed enemy; or while engaged in military operations involving conflict with an opposing armed force in which the United States is not a belligerent party. Per 10 U.S.C. 1133, award of the Bronze Star Medal is limited to members of the Armed Forces of the United States who receive imminent danger pay.

(1) *Heroism.* Awards may be made for acts of heroism, performed under circumstances described above, which are of lesser degree than required for the award of the Silver Star.

(2) *Meritorious achievement and service.* Awards may be made to recognize single acts of merit and meritorious service. The lesser degree than that required for the award of the LM, must nevertheless have been meritorious and accomplished with distinction.

(3) Awards may be made, by letter application to NPRC, 9700 Page Avenue, St. Louis, MO 63132–5100 (Soldiers who retired or were discharged after October 1, 2002 should send their requests to the Commander, U.S. Army Human Resources Command, St. Louis, ATTN: AHRC–CC–B, 1 Reserve Way, St. Louis, MO 63132–5200), enclosing documentary evidence, if possible, to each member of the Armed Forces of the United States who, after December 6, 1941, has been cited in orders or awarded a certificate for exemplary conduct in ground combat against an armed enemy between December 7, 1941 and September 2, 1945, inclusive, or whose meritorious achievement has been other wise confirmed by documents executed prior to July 1, 1947. For this purpose, an award of the Combat Infantryman Badge or Medical Badge is considered as a citation in orders. Documents executed since August 4, 1944 in connection with recommendations for the award of decorations of higher degree than the Bronze Star Medal will not be used to establish a basis for the award under this paragraph.

(4) Upon letter application, award of the Bronze Star Medal may be made to eligible soldiers who participated in the Philippine Islands Campaign between December 7, 1941 to May 10, 1942. Performance of duty must have been on the island of Luzon or the Harbor Defenses in Corregidor and Bataan. Only soldiers who were awarded the

Distinguished Unit Citation (redesignated the Presidential Unit Citation on November 3, 1966) may be awarded this decoration. Letter application should be sent to NPRC (see paragraph (a)(3) of this section).

(b) *Description.* A bronze star 1½ inches in circumscribing diameter. In the center thereof is a 3/16-inch diameter raised bronze star, the center line of all rays of both stars coinciding. The reverse has the inscription ''Heroic or Meritorious Achievement.'' The star is suspended by a rectangular-shaped loop with corners rounded from a moired silk ribbon 1⅜ inches in length and 1⅜ inches in width, composed of stripes of white (1/32-inch), red (9/16-inch), white (1/32-inch), blue (⅛-inch), white (/32-inch), red (9/16-inch), and white (1/32-inch). A bronze block letter ''V'' ¼ inch in height with serifs at the top of the members is worn on the suspension and service ribbons of the Bronze Star Medal to denote an award made for heroism (valor). Not more than one ''V'' device will be worn. When one or more oak-leaf clusters appear on the same ribbon the ''V'' device is worn on the wearer's right. (E.O. 9419, February 4, 1944, 9 FR 1495).

§ 578.17 Purple Heart.

(a) *Criteria.* The Purple Heart was established by General George Washington at Newburgh, New York, on August 7, 1782, during the Revolutionary War. It was reestablished by the President of the United States per War Department General Orders (WDGO) 3, 1932 and is currently awarded pursuant to Executive Order 11016, April 25, 1962; Executive Order 12464, February 23, 1984; Public Law 98–525, October 19, 1984. Public Law 103–160, November 30, 1993; Public Law 104–106, February 10, 1996; and Public Law 105–85, November 18, 1997. It is awarded in the name of the President of the United States to any member of the Armed Forces of the United States who, while serving under competent authority in any capacity with one of the U.S. Armed Services after April 5, 1917 who has been wounded or killed, or who has died or may hereafter die after being wounded:

(1) In any action against an enemy of the United States.

(2) In any action with an opposing armed force of a foreign country in which the Armed Forces of the United States are or have been engaged.

(3) While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(4) As a result of an act of any such enemy of opposing armed forces.

(5) As the result of an act of any hostile foreign force.

(6) After March 28, 1973, as a result of an international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the Secretary of Army, or jointly by the Secretaries of the separate armed services concerned if persons from more than one service are wounded in the attack.

(7) After March 28, 1973, as a result of military operations while serving outside the territory of the United States as part of a peacekeeping force.

(b) While clearly an individual decoration, the Purple Heart differs from all other decorations in that an individual is not ''recommended'' for the decoration; rather he or she is entitled to it upon meeting specific criteria.

(1) A Purple Heart is authorized for the first wound suffered under conditions indicated above, but for each subsequent award an Oak Leaf Cluster will be awarded to be worn on the medal or ribbon. Not more than one award will be made for more than one wound or injury received at the same instant or from the same missile, force, explosion, or agent.

(2) A wound is defined as an injury to any part of the body from an outside force or agent sustained under one or more of the conditions listed above. A physical lesion is not required, however, the wound for which the award is made must have required treatment by a medical officer and records of medical treatment for wounds or injuries received in action must have been made a matter of official record.

(3) When contemplating an award of this decoration, the key issue that commanders must take into consideration is the degree to which the enemy caused the injury. The fact that the proposed recipient was participating in direct or indirect combat operations is a necessary prerequisite, but is not sole justification for award.

(4) Examples of enemy-related injuries which clearly justify award of the Purple Heart are as follows:

(i) Injury caused by enemy bullet, shrapnel, or other projectile created by enemy action.

(ii) Injury caused by enemy placed mine or trap.

(iii) Injury caused by enemy released chemical, biological, or nuclear agent.

(iv) Injury caused by vehicle or aircraft accident resulting from enemy fire.

(v) Concussion injuries caused as a result of enemy generated explosions.

(5) Examples of injuries or wounds which clearly do not qualify for award of the Purple Heart are as follows:

(i) Frostbite or trench foot injuries.

(ii) Heat stroke.

(iii) Food poisoning not caused by enemy agents.

(iv) Chemical, biological, or nuclear agents not released by the enemy.

(v) Battle fatigue.

(vi) Disease not directly caused by enemy agents.

(vii) Accidents, to include explosive, aircraft, vehicular, and other accidental wounding not related to or caused by enemy action.

(viii) Self-inflicted wounds, except when in the heat of battle, and not involving gross negligence.

(ix) Post traumatic stress disorders.

(x) Jump injuries not caused by enemy action.

(6) It is not intended that such a strict interpretation of the requirement for the wound or injury to be caused by direct result of hostile action be taken that it would preclude the award being made to deserving personnel. Commanders must also take into consideration the circumstances surrounding an injury, even if it appears to meet the criteria. Note the following examples:

(i) In a case such as an individual injured while making a parachute landing from an aircraft that had been brought down by enemy fire; or, an individual injured as a result of a vehicle accident caused by enemy fire, the decision will be made in favor of the individual and the award will be made.

(ii) Individuals injured as a result of their own negligence; for example, driving or walking through an unauthorized area known to have been mined or placed off limits or searching for or picking up unexploded munitions as war souvenirs, will not be awarded the Purple Heart as they clearly were not injured as a result of enemy action, but rather by their own negligence.

(7) Members killed or wounded in action by friendly fire, 10 U.S.C. 1129.

(i) For purposes of award of the Purple Heart, the Secretary of the Army shall treat a member of the Armed Forces described in paragraph (a) of this section in the same manner as a member who is killed or wounded in action as the result of an act of an enemy of the United States.

(ii) A member described in this subsection is a member who is killed or wounded in action by weapon fire while directly engaged in armed conflict, other than as the result of an act of an enemy of the United States, unless (in the case of a wound) the wound is the result of willful misconduct of the member.

(iii) This section applies to members of the Armed Forces who are killed or wounded on or after December 7, 1941. In the case of a member killed or wounded, as described in paragraph (b) of this section, on or after December 7, 1941 and before November 30, 1993, the Secretary of the Army shall award the Purple Heart under provisions of paragraph (a) of this section in each case which is known to the Secretary before such date or for which an application is made to the Secretary in such manner as the Secretary requires.

(c) A Purple Heart will be issued to the next of kin of each person entitled to a posthumous award. Issue will be made automatically by the CG, USA HRC, upon receiving a report of death indicating entitlement.

(d) Upon written application to NPRC (see § 578.16 (a)(3)) award may be made to any member of the Army, who during World War I, was awarded a Meritorious Service Citation Certificate signed by the Commander in Chief, American Expeditionary Forces, or who was authorized to wear wound chevrons. Posthumous awards to personnel who were killed or died of wounds after April 5, 1917 will be made to the appropriate next of kin upon application to the CG, USA HRC (see § 578.3(c) for address).

(e) Any member of the Army who was awarded the Purple Heart for meritorious achievement or service, as opposed to wounds received in action, between December 7, 1941 and September 22, 1943, may apply for award of an appropriate decoration instead of the Purple Heart.

(f) For those who became Prisoners of War during World War II, the Korean War and after April 25, 1962, the Purple Heart will be awarded to individuals wounded while prisoners of foreign forces, upon submission by the individual to the Department of the U.S. Army of an affidavit that is supported by a statement from a witness, if this is possible. Documentation and inquiries should be directed to Commander, USA HRC (see § 578.3(c) for address).

(g) Any member of the U.S. Army who believes that he or she is eligible for the Purple Heart, but through unusual circumstances no award was made, may submit an application through military channels, to Commander, USA HRC (see § 578.3(c) for address). Application will include complete documentation, to include evidence of medical treatment, pertaining to the wound.

(h) *Description.* On a purple heart within a bronze border, a profile head in relief of General George Washington in military uniform. Above the heart is a shield of General Washington's coat of arms between two sprays of leaves in green enamel. On the reserve below the shield and leaves without enamel is a raised bronze heart with the inscription ''For Military Merit.'' The entire device is 1 11/16 inches in length. The medal is suspended by a rectangular-shaped loop with corners rounded from a moired silk ribbon 1 3/8 inches in length and 1 3/8 inches in width consisting of a purple (pansy) center with white edges (1/8-inch).

§ 578.18 Meritorious Service Medal.

(a) *Criteria.* The Meritorious Service Medal was established by Executive Order 11448, January 16, 1969 as amended by Executive Order 12312, July 2, 1981. It is awarded to any member of the Armed Forces of the United States or to any member of the Armed Forces of a friendly foreign nation who, has distinguished himself or herself by outstanding meritorious achievement or service under the following circumstances:

(1) After January 16, 1969, for meritorious service or achievement while serving in a non-combat area.

(2) On or after September 11, 2001, for outstanding non-combat meritorious achievement or service in a non-combat or combat area.

(b) *Description.* A Bronze medal, 1 1/2 inches in diameter overall, consisting of six rays issuant from the upper three points of a five-pointed star with beveled edges and containing two smaller stars defined by incised outlines; in front of the lower part of the star an eagle with wings upraised standing upon two upward curving branches of laurel tied with a ribbon between the feet of the eagle. The reverse has the encircled inscriptions ''UNITED STATES OF AMERICA'' and ''MERITORIOUS SERVICE''. The moired ribbon is 1 3/8 inches wide and consists of the following stripes: 1/8 inch Crimson 67112; 1/4 inch White 67101; center 5/8 inch Crimson; 1/4 inch White; and 1/8 inch Crimson.

§ 578.19 Air Medal.

(a) *Criteria.* The Air Medal was established by Executive Order 9158, May 11, 1942 as amended by Executive Order 9242–A, September 11, 1942. It is awarded to any person who, while serving in any capacity in or with the U.S. Army, has distinguished himself or herself by meritorious achievement while participating in aerial flight. Awards may be made to recognize single acts of merit or heroism, or for meritorious service as described.

(1) Awards may be made for acts of heroism in connection with military operations against an armed enemy or while engaged in military operations involving conflict with an opposing armed force in which the United States is not a belligerent party, which are of a lesser degree than required for award of the Distinguished Flying Cross.

(2) Awards may be made for single acts of meritorious achievement, involving superior airmanship, which are of a lesser degree than required for award of the Distinguished Flying Cross, but nevertheless were accomplished with distinction beyond that normally expected.

(3) Awards for meritorious service may be made for sustained distinction in the performance of duties involving regular and frequent participation in aerial flight for a period of at least 6 months. In this regard, accumulation of a specified number of hours and missions will not serve as the basis for award of the Air Medal. Criteria in § 578.19(a)(1), concerning conditions of conflict are applicable to award of the Air Medal for meritorious service.

(4) Award of the Air Medal is primarily intended to recognize those personnel who are on current crewmember or non-crewmember flying status which requires them to participate in aerial flight on a regular and frequent basis in the performance of their primary duties. However, it may also be awarded to certain other individuals whose combat duties require regular and frequent flying in other than a passenger status, or individuals who perform a particularly noteworthy act while performing the function of a crewmember, but who are not on flying status as prescribed in AR 600–106. These individuals must make a discernible contribution to the operational land combat mission or to the mission of the aircraft in flight. Examples of personnel whose combat duties require them to fly include those in the attack elements of units involved in air-land assaults against an armed enemy and those directly involved in airborne command and control of combat operations. Involvement in such activities, normally at the brigade/group level and below, serves only to establish eligibility for award of the Air Medal; the degree of heroism, meritorious achievement or exemplary service determines who should receive the award. Awards will not be made to individuals who use air transportation solely for the purpose of moving from point to point in a combat zone.

(5) Numerals, starting with 2 will be used to denote second and subsequent awards of the Air Medal.

(b) *Description.* A bronze compass rose 1 11/16-inches circumscribing diameter suspended by the pointer and

charged with an eagle volant carrying two lightning flashes in its talons. The points of the compass rose on the reverse are modeled with the central portion plain. The medal is suspended from a moired silk ribbon 1⅜ inches in length and 1⅜ inches in width, composed of a band of ultramarine blue (⅛-inch), a band of golden orange (¼-inch), a band of ultramarine blue (⅝-inch), a band of golden orange (¼-inch), and a band of ultramarine blue (⅛-inch), by a ring engaging the pointer. (E.O. 9158, May 11, 1942, 7 FR 3541, as amended by E.O. 9242A, September 11, 1942, 7 FR 7874).

§ 578.20 Army Commendation Medal.

(a) *Criteria.* The Army Commendation Medal (ARCOM) was established by War Department (WD) Circular 377, on December 18, 1945 (amended in DAGO 10, March 31, 1960). It is awarded to any members of the Armed Forces of the United States who, while serving in any capacity with the Army after December 6, 1941, distinguishes himself or herself by an act of heroism, extraordinary achievement, or meritorious service. Award may be made to a member of the Armed Forces of a friendly foreign nation who, after June 1, 1962, distinguishes himself or herself by an act of heroism, extraordinary achievement, or meritorious service, which has been of mutual benefit to a friendly nation and the United States.

(1) Awards of the ARCOM may be made for acts of valor performed under circumstances described above which are of lesser degree than required for award of the Bronze Star Medal. These acts may involve aerial flight.

(2) An award of the ARCOM may be made for acts of non-combat related heroism, which do not meet the requirements for an award of the Soldier's Medal.

(3) The ARCOM will not be awarded to general officers.

(4) Awards of the ARCOM may be made on letter application to NPRC (see § 578.16(a)(3) for address), to any individual commended after December 6, 1941 and before January 1, 1946 in a letter, certificate, or order of commendation, as distinguished from letter of appreciation, signed by an officer in the grade or position of a major general or higher. Awards of the Army Commendation Ribbon and of the Commendation Ribbon with Metal Pendant are re-designated by DAGO 10, March 31, 1960, as awards of the ARCOM, without amendments of certificates or of orders previously issued.

(5) The Commander, Eighth U.S. Army is authorized to award the Army Commendation Medal for meritorious service to Korean Augmentation to U.S. Army (KATUSA) personnel.

(b) *Description.* On a 1⅜-inch bronze hexagon, one point up, an American bald eagle with wings displayed horizontally grasping three crossed arrows and bearing on its breast a shield paly of 13 pieces and a chief. On the reverse between the words ''For Military'' and ''Merit'' a panel, all above a sprig of laurel. A moired silk ribbon 1⅜ inches in length and 1⅜ inches in width, composed of stripes of white (3/32-inch), green (25/64-inch), white (1/32-inch), green (1/16-inch), white (1/32-inch), green (1/16-inch), white (1/32-inch), green (1/16-inch), white (1/32-inch), green (1/16-inch), white (1/32-inch), green (25/64-inch), and white (3/32-inch).

§ 578.21 Army Achievement Medal.

(a) *Criteria.* The Army Achievement Medal (AAM) was established by the Secretary of the Army, April 10, 1981. It is awarded to any member of the Armed Forces of the United States, or to any member of the Armed Forces of a friendly foreign nation, who while serving in any capacity with the Army distinguished himself or herself by meritorious service or achievement of a lesser degree than required for award of the Army Commendation Medal under the following circumstances:

(1) After August 1, 1981, for meritorious service or achievement while serving in a non-combat area.

(2) On or after September 11, 2001, for non-combat meritorious achievement or service.

(b) The AAM will not be awarded to general officers.

(c) *Description.* A Bronze octagonal medal, 1½ inches in diameter, with one angle at the top centered. On the obverse is a design consisting of the elements of the DA plaque and the date ''1775'' at the bottom. On the reverse, in three lines, are the words ''FOR MILITARY ACHIEVEMENT'' above a space for inscription and below there are two slips of laurel. The moired ribbon is 1⅜ inches wide and consists of the following stripes: ⅛ inch Green 67129; 1/16 inch White 67101; ⅛ inch Green; 1/16 inch White; 9/32 inch Ultramarine Blue 67118; center 1/16 inch White; 9/32 inch Ultramarine Blue; 1/16 inch White; ⅛ inch Green; 1/16 inch White; and ⅛ inch Green.

§ 578.22 Prisoner of War Medal.

(a) *Criteria.* The POW Medal is authorized by Public Law 99–145, 10 U.S.C. 1128, November 8, 1985, as amended by 10 U.S.C. 1128, November 29, 1989. It is authorized for any person who, while serving in any capacity with the U.S. Armed Forces, was taken prisoner and held captive after April 5, 1917.

(1) The POW Medal is to be issued only to those U.S. military personnel and other personnel granted creditable U.S. military service, who were taken prisoner and held captive—

(i) While engaged in an action against an enemy of the United States.

(ii) While engaged in military operations involving conflict with an opposing foreign force.

(iii) While serving with friendly forces engaged in an armed conflict against an opposing force in which the United States is not a belligerent party.

(iv) By foreign armed forces that are hostile to the United States, under circumstances which the Secretary concerned finds to have been comparable to those under which persons have generally been held captive by enemy armed forces during periods of armed conflict.

(2) U.S. and foreign civilians who have been credited with U.S. military service which encompasses the period of captivity are also eligible for the medal. The Secretary of Defense authorized on January 27, 1990, the POW Medal for the Philippine Commonwealth Army and Recognized Guerrilla Unit Veterans who were held captive between December 7, 1941, and September 26, 1945. DD Form 2510–1 (Prisoner of War Medal Application/Information-Philippine Commonwealth Army and Recognized Guerrilla Veterans) was developed as the application for Filipino Veterans who fit this category.

(3) For purposes of this medal, past armed conflicts are defined as World War I, World War II, Korean War, Vietnam Conflict, Grenada, Panama, Persian Gulf War, and Somalia. Hostages of terrorists and persons detained by governments with which the United States is not engaged actively in armed conflict are not eligible for the medal.

(4) Any person convicted of misconduct or a criminal charge by a U.S. military tribunal, or who receives a less than honorable discharge based upon actions while a prisoner of war, or whose conduct was not in accord with the Code of Conduct, and whose actions are documented by U.S. military records is ineligible for the medal. The Secretary of the Army is the authority for deciding eligibility in such cases.

(5) No more than one POW Medal will be awarded. For subsequent award of the medal, service stars will be awarded and worn on the suspension and service ribbon of the medal. A period of captivity terminates on return to U.S.

military control. Escapees who do not return to U.S. military control and are recaptured by an enemy do not begin a new period of captivity for subsequent award of the POW Medal. (Service stars are described in § 578.61).

(6) The POW Medal may be awarded posthumously.

(7) The primary next of kin of eligible prisoners of war who die in captivity may be issued the POW Medal regardless of the length of stay in captivity.

(8) Personnel officially classified as Missing in Action (MIA) are not eligible for award of the POW Medal. The POW Medal will only be awarded when the individual's prisoner of war status has been officially confirmed and recognized as such by the DA. Likewise, the return of remains, in and of itself, does not constitute evidence of confirmed prisoner of war status.

(b) *Award of the POW Medal to active military personnel, veterans, retirees and their next of kin.*

(1) *Active Military Personnel.* Award of the POW Medal to military personnel in an active war will be processed by the Commander, USA HRC (see § 578.3(c)), after coordination with the Repatriation and Family Affairs Division.

(2) Veterans, retirees and their next of kin. All requests for the POW Medal will be initiated by eligible former POWs, or their next of kin, using a personal letter or DD Form 2510 (Prisoner of War Medal Application/ Information). Applications should be forwarded to the NPRC (see § 578.16(a)(3) for address).

(c) *Description.* A purple heart within a Gold border, 1 3/8 inches wide, containing a profile of General George Washington. Above the heart appears a shield of the Washington Coat of Arms (a White shield with two Red bars and three Red stars in chief) between sprays of Green leaves. The reverse consists of a raised Bronze heart with the words ''FOR MILITARY MERIT'' below the coat of arms and leaves. The ribbon is 1 3/8 inches wide and consists of the following stripes: 1/8 inch White 67101; 1 1/8 inches Purple 67115; and 1/8 inch White 67101.

§ 578.23 National Defense Service Medal.

(a) *Criteria.* The National Defense Service Medal (NDSM) was established by Executive Order 10448, April 22, 1953, as amended by Executive Order 11265, January 11, 1966 and Executive Order 12776, October 18, 1991. It is awarded for honorable active service for any period between June 27, 1950 and July 27, 1954, both dates inclusive; between January 1, 1961 and August 14, 1974, both dates inclusive; between August 2, 1990 and November 30, 1995, both dates inclusive; and from September 11, 2001 to a date to be determined.

(1) For the purpose of this award, the following persons will not be considered as performing active service:

(i) Army National Guard and U.S. Army Reserve forces personnel on short tours of duty to fulfill training obligations under an inactive duty training program.

(ii) Any service member on temporary duty or temporary active duty to serve on boards, courts, commissions, and like organizations.

(iii) Any service member on active duty for the sole purpose of undergoing a physical examination.

(2) In addition to the conditions listed above, Executive Order 12776 extended award of the NDSM to all members of the Army National Guard and United States Army Reserve who were part of the selected Reserve in good standing during the period August 2, 1990 to November 30, 1995. During this period, soldiers in the following categories will not be considered eligible:

(i) Any soldier of the Individual Ready Reserve, Inactive National Guard or the standby or retired Reserve whose active duty service was for the sole purpose of undergoing a physical examination.

(ii) Any soldier of the Individual Ready Reserve, Inactive National Guard or the standby or retired reserve whose active duty service was for training only, or to serve on boards, courts, commissions and like organizations.

(3) On March 28, 2003, the President signed an amendment to Executive Order 10448 that extends the eligibility criteria for award of the NDSM to members of the selected Reserve of the Armed Forces of the United States in good standing during the period beginning September 11, 2001 to a date to be determined to be eligible for award of the NDSM.

(4) Any member of the Army National Guard or U.S. Army Reserve who, after December 31, 1960, becomes eligible for the award of the Armed Forces Expeditionary Medal or the Vietnam Service Medal, is also eligible for award of the NDSM. The NDSM may be awarded to members of the Reserve Component who are ordered to Federal active duty regardless of the duration (except for categories listed above).

(5) To signify receipt of a second or subsequent award of the NDSM, a service star will be worn on the service ribbon by U.S. Army personnel so qualified. Second or third award of the NDSM is authorized for soldiers who served in one or more of the three time periods as listed in paragraph (a) of this section. It is not authorized for soldiers who met the criteria in one time period, left active duty and returned during the same period of eligibility. (Service stars are described in § 578.61).

(6) Cadets of the U.S. Military Academy are eligible for the NDSM, during any of the inclusive periods listed above, upon completion of the swearing-in ceremonies as a cadet.

(7) The NDSM may be awarded posthumously.

(b) *Description.* On a Bronze medal, 1 1/4 inches in diameter, an eagle displayed with inverted wings standing on a sword and palm branch, all beneath the inscription ''NATIONAL DEFENSE''. On the reverse is a shield taken from the Coat of Arms of the United States with an open wreath below it, the right side of oak leaves and the left side of laurel leaves. The ribbon is 1 3/8 inches wide and consists of the following stripes: 7/16 inch Scarlet 67111; 1/32 inch White 67101; 1/32 inch Old Glory Blue 67178; 1/32 inch White; 1/32 inch Scarlet; center 1/4 inch Golden Yellow 67104; 1/32 inch Scarlet; 1/32 inch White; 1/32 inch Old Glory Blue; 1/32 inch White; and 7/16 inch Scarlet.

§ 578.24 Antarctica Service Medal.

(a) *Criteria.* The Antarctica Service Medal (ASM) was established by Public Law 86–600 (DA Bulletin. 3, 1960). It is awarded to any person who, after January 2, 1946 and before a date to be announced, meets any of the following qualifications:

(1) Any member of the Armed Forces of the United States or civilian citizen, national, or resident alien of the United States who, is a member of a direct support or exploratory operation in Antarctica.

(2) Any member of the Armed Forces of the United States or civilian citizen, national, or resident alien of the United States who participates in or has participated in a foreign Antarctic expedition in Antarctica in coordination with a United States expedition and who is or was under the sponsorship and approval of competent U.S. Government authority.

(3) Any member of the Armed Forces of the United States who participates in or has participated in flights as a member of the crew of an aircraft flying to or from the Antarctic continent in support of operations in Antarctica.

(4) Any member of the Armed Forces of the United States or civilian citizen, national, or resident alien of the United States who serves or has served on a U.S. ship operating south of latitude 60

degrees S. in support of U.S. programs in Antarctica.

(5) Any person, including citizens of foreign nations, not fulfilling any above qualification, but who participates in or has participated in a United States expedition in Antarctica at the invitation of a participating United States Agency. In such case, the award will be made by the Secretary of the Department under whose cognizance the expedition falls provided the commander of the military support force as senior U.S. representative in Antarctica considers that the individual has performed outstanding and exceptional service and shared the hardship and hazards of the expedition.

(b) *Personnel who remain on the Antarctic Continent during the winter months will be eligible to wear a clasp or a disc as described below:*

(1) A clasp with the words ''Wintered Over'' on the suspension ribbon of the medal:

(2) A 5/16 inch diameter disc with an outline of the Antarctic continent inscribed thereon fastened to the bar ribbon representing the medal.

(3) The appurtenances in paragraphs (b)(1) and (2) of this section are awarded in bronze for the first winter, in gold for the second winter and in silver for personnel who ''winter over'' three or more times.

(c) Subsequent to June 1, 1973, minimum time limits for the award are 30 days under competent orders to duty at sea or ashore, south of latitude 60 degrees S. Each day of duty under competent orders at any outlying station on the Antarctic continent will count as 2 days when determining award eligibility. Effective July 1, 1987, flight crews of aircraft providing logistics support from outside the Antarctic area may qualify for the award after 15 missions (one flight in and out during any 24-hour period equals one mission). Days need not be consecutive.

(d) No person is authorized to receive more than one award of the ASM. Not more than one clasp or disc will be worn on the ribbon. Antarctica is defined as the area south of latitude 60 degrees S. The ASM takes precedence immediately after the Korean Service Medal.

(e) *Description.* The medal is bronze, 1¼ inches in diameter, with a view of a polar landscape and the standing figure in Antarctica clothing facing to the front between the horizontally placed words ''ANTARCTICA'' on the figure's right and ''SERVICE'' on the figure's left. On the reverse is a polar projection with geodesic lines of the continent of Antarctica across which are the horizontally placed words ''COURAGE'', ''SACRIFICE'', and ''DEVOTION'', all within a circular decorative border of penguins and marine life. The Suspension Ribbon Clasp: On a metal clasp, 1¼ inches in width and ¼ inch in height, inscribed with the words ''WINTERED OVER'' in raised letters within a 1/32 inch rim. The metal color of the clasp is Bronze for the first winter, Gold for the second winter and Silver for the third winter. The Service Ribbon Attachment: On a metal disc, 5/16 inch in diameter, a superimposed delineation of the Antarctica continent. The metal color of the ribbon attachment is Bronze for the first winter, Gold for the second winter and Silver for the third winter. The ribbon is 1⅜ inches wide and consists of a 3/16 inch Black stripe on each edge and graded from a White stripe in the center to a Pale Blue, Light Blue, Greenish Blue, and Medium Blue.

§ 578.25 Armed Forces Expeditionary Medal.

(a) *Criteria.* The Armed Forces Expeditionary Medal (AFEM) was established by Executive Order 10977, dated December 4, 1961 (DA Bulletin. 1, 1962) and Executive Order 11231, July 8, 1965. This medal is authorized for:

(1) U.S. military operations.

(2) U.S. operations in direct support of the United Nations.

(3) U.S. operations of assistance for friendly foreign nations.

(b) *Requirements.* The AFEM is awarded for services after July 1, 1958, meeting the following qualifications:

(1) Personnel must be a bona fide member of a unit and engaged in the operation, or meet one or more of the following criteria:

(i) Have served not less than 30 consecutive days in the area of operations.

(ii) Be engaged in direct support of the operation for 30 consecutive days or 60 nonconsecutive days, provided this support involves entering the area of operations. The qualifying criteria for non-unit direct support personnel in Grenada is 6 consecutive days or 12 non-consecutive days.

(iii) Serve for the full period where an operation is of less than 30 days duration.

(iv) Be engaged in actual combat, or duty which is equally as hazardous as combat, during the operation with armed opposition, regardless of time in the area.

(v) Participate as a regularly assigned crewmember of an aircraft flying into, out of, within, or over the area in support of the military operation.

(2) If the criteria above have not been fulfilled the individual must be recommended, or attached to a unit recommended, by the chief of a service or the commander of a unified or specified command for award of the medal. Such recommendations may be made to the Joint Chiefs of Staff (JCS) for duty of such value to the operation as to warrant particular recognition.

(c) The designated U.S. military operations, areas, and dates are provided in Table 4 below:

TABLE 4

Area	Dates	Explanation
Quemoy and Matsu Islands	August 23, 1956 to June 1, 1963.	
Lebanon	July 1, 1958 to November 1, 1958.	
Taiwan Straits	August 23, 1958 to January 1, 1959.	
Berlin	August 14, 1961 to June 1, 1963.	
Cuba	October 24, 1962 to June 1, 1963.	
Congo	November 23 to 27, 1964.	
Dominican Republic	April 28, 1965 to September 21, 1966.	
Korea	October 1, 1966 to June 30, 1974.	
Cambodia—Operation EAGLE PULL	April 11 to 13, 1975	Evacuation of Cambodia.
Vietnam—Operation FREQUENT WIND	April 29 to 30, 1975	Evacuation of Vietnam (see § 578.26(e) for conversion of AFEM to VSM.)
Mayaguez Operation	May 15, 1975.	
Grenada—Operation URGENT FURY	October 23, 1983 to November 21, 1983	The qualifying criteria for non-unit direct support personnel in Grenada is 6 consecutive days or 12 nonconsecutive days.

TABLE 4—Continued

Area	Dates	Explanation
Libya-Operation ELDORADO CANYON	April 12, 1986 to April 17, 1986.	
Panama-Operation JUST CAUSE	December 20, 1989 to January 31, 1990.	
Haiti-Operation UPHOLD DEMOCRACY	September 16, 1994 to March 31, 1995.	

(d) Designated U.S. operations in direct support of the United Nations are provided in Table 5 below:

TABLE 5

Area	Dates	Explanation
Congo	July 14, 1960 to September 1, 1962.	
Somalia-Operations RESTORE HOPE and UNITED SHIELD.	December 5, 1992 to March 31, 1995.	
Former Republic of Yugoslavia-Operations JOINT ENDEAVOR and JOINT GUARD.	June 1, 1992 to June 20, 1998	Only for participants deployed in Bosnia-Herzegovina and Croatia.
Former Republic of Yugoslavia-Operation JOINT FORGE.	June 21, 1998 to a date to be determined.	

(e) Designated U.S. operations of assistance for a friendly foreign nation are provided in Table 6 below:

TABLE 6

Area	Dates	Explanation
Vietnam	July 1, 1958 to July 3, 1965.	
Laos	April 19, 1961 to October 7, 1962.	
Cambodia	March 29, 1973 to August 15, 1973.	
Thailand	March 29, 1973 to August 15, 1973	Only those in direct support of Cambodia operations.
El Salvador	January 1, 1981 to February 1, 1992.	
Lebanon	June 1, 1983 to December 1, 1987.	
Persian Gulf—Operation EARNEST WILL	July 24, 1987 (the date of the Bridgeton incident) to August 1, 1990.	The area of operations is the area from 20 degrees north latitude northward to 30 degrees, 30 minutes, north latitude and from 46 degrees, 36 minutes, east longitude eastward to 63 degrees east longitude. These geographical limits include the Persian Gulf, Bahrain, Kuwait, the Gulf of Oman and most of Saudi Arabia.
Southwest Asia:		
—Operation SOUTHERN WATCH	December 1, 1995 to a date to be determined.	
—Maritime Intercept Operation	December 1, 1995 to a date to be determined.	
—Vigilant Sentinel	December 1, 1995 to February 15, 1997.	
—Operation NORTHERN WATCH	January 1, 1997 to a date to be determined.	
—Operation DESERT THUNDER	November 11, 1998 to December 22, 1998.	
—Operation DESERT FOX	December 16, 1998 to December 22, 1998.	
—Operation DESERT SPRING	December 31, 1998 to a date to be determined.	

(f) One bronze service star is worn to denote subsequent award of the AFEM. To be eligible for additional awards, service must be rendered in more than one of the designated areas and dates specified in paragraphs (c), (d), and (e) of this section. No two awards will be made for service in the same designated area.

(g) *Arrowhead Device.* The arrowhead device is a bronze replica of an Indian arrowhead ¼-inch high. It denotes participation in a combat parachute jump, helicopter assault landing, combat glider landing, or amphibious assault landing, while assigned or attached as a member of an organized force carrying out an assigned tactical mission. A soldier must actually exit the aircraft or watercraft, as appropriate, to receive assault landing credit. Individual assault credit is tied directly to the combat assault credit decision for the unit to which the soldier is attached or assigned at the time of the assault. It is worn on the service and suspension ribbons of the AFEM when the unit is credited with assault landing credit. Only one arrowhead device will be worn on the ribbon.

(h) *Description.* The medal is bronze, 1¼ inches in diameter, an eagle, with wings addorsed and inverted, standing on a sword loosened in its scabbard, and super-imposed on a radiant compass

rose of eight points, all within the circumscription ''ARMED FORCES'' above and ''EXPEDITIONARY SERVICE'' below with a sprig of laurel on each side. On the reverse is the shield from the United States Coat of Arms above two laurel branches separated by a bullet, all within the circumscription ''UNITED STATES OF AMERICA''. The ribbon is 1 3/8 inches wide and consists of the following stripes: 3/32 inch Green 67129; 3/32 inch Golden Yellow 67104; 3/32 inch Spicebrown 67196; 3/32 inch Black 67138; 7/32 inch Bluebird 67117; 1/16 inch Ultramarine Blue 67118; 1/16 inch White 67101; 1/16 inch Scarlet; 7/32 inch Bluebird; 3/32 inch Black; 3/32 inch Spicebrown; 3/32 inch Golden Yellow; and 3/32 inch Green.

§ 578.26 Vietnam Service Medal.

(a) *Criteria.* The Vietnam Service Medal (VSM) was established by Executive Order 11231, July 8, 1965. It is awarded to all members of the Armed Forces of the United States serving in Vietnam and contiguous waters or airspace thereover, after July 3, 1965 through March 28, 1973. Members of the Armed Forces of the United States in Thailand, Laos, or Cambodia, or the airspace thereover, during the same period and serving in direct support of operations in Vietnam are also eligible for this award.

(b) *Qualifications:* To qualify for award of the VSM an individual must meet one of the following qualifications:

(1) Be attached to or regularly serve for 1 or more days with an organization participating in or directly supporting military operations.

(2) Be attached to or regularly serve for 1 or more days abroad a Naval vessel directly supporting military operations.

(3) Actually participate as a crewmember in one or more aerial flights into airspace above Vietnam and contiguous waters directly supporting military operations.

(4) Serve on temporary duty for 30 consecutive days or 60 nonconsecutive days in Vietnam or contiguous areas, except that time limit may be waived for personnel participating in actual combat operations.

(c) No person will be entitled to more than one award of the VSM.

(d) Individuals qualified for the AFEM for reason of service in Vietnam between July 1, 1958 and July 3, 1965 (inclusive) shall remain qualified for that medal. Upon request (unit personnel officer) any such individual may be awarded the VSM instead of the AFEM. In such instances, the AFEM will be deleted from the list of authorized medals in personnel records. No person will be entitled to both awards for Vietnam service.

(e) Service members who earned the AFEM for Operation FREQUENT WIND between April 29–30, 1975, may elect to receive the Vietnam Service Medal instead of the AFEM. No service member may be issued both medals for service in Vietnam.

(f) Vietnam and contiguous waters, as used herein, is defined as an area which includes Vietnam and the water adjacent thereto within the following specified limits: From a point on the East Coast of Vietnam at the juncture of Vietnam with China southeastward to 21 degrees N. latitude, 108 degrees; 15′ E. longitude; thence, southward to 18 degrees; N. latitude, 108 degrees; 15′ E. longitude; thence southeastward to 17 degrees 30′ N. latitude, 111 degrees E. longitude; thence southward to 11 degrees N. latitude; 111 degrees E. longitude; thence southwestward to 7 degrees N. latitude, 105 degrees E. longitude; thence westward to 7 degrees N. latitude, 103 degrees; E. longitude; thence northward to 9 degrees 30′ N. latitude, 103 degrees E. longitude, thence northeastward to 10 degrees 15′ N. latitude, 104 degrees 27′ E. longitude; thence northward to a point on the West Coast of Vietnam at the juncture of Vietnam with Cambodia.

(g) The VSM may be awarded posthumously.

(h) The boundaries of the Vietnam combat zone for campaign participation credit are as defined in paragraph (d) of this section.

(i) One bronze service star is authorized for each campaign under the following conditions:

(1) Assigned or attached to and present for duty with a unit during the period in which it participated in combat.

(2) Under orders in the combat zone and in addition meets any of the following requirements:

(i) Awarded a combat decoration.

(ii) Furnished a certificate by a commanding general of a corps, higher unit, or independent force that he actually participated in combat.

(iii) Served at a normal post of duty (as contrasted to occupying the status of an inspector, observer, or visitor).

(iv) Aboard a vessel other than in a passenger status and furnished a certificate by the home port commander of the vessel that he served in the combat zone.

(3) Was an evadee or escapee in the combat zone or recovered from a prisoner-of-war status in the combat zone during the time limitations of the campaign. Prisoners of war will not be accorded credit for the time spent in confinement or while otherwise in restraint under enemy control.

(j) *Description.* The medal is Bronze, 1 1/4 inches in diameter, an oriental dragon behind a grove of bamboo trees above the inscription ''REPUBLIC OF VIETNAM SERVICE.'' On the reverse, a crossbow surmounted a by a torch above the arched inscription ''UNITED STATES OF AMERICA''. The ribbon is 1 3/8 inches wide and consists of the following stripes: 1/8 inch Primitive Green 67188; 5/16 inch Air Force Yellow 67103; 1/16 inch Old Glory Red 67156; 5/32 inch Air Force Yellow; center 1/16 inch Old Glory Red; 5/32 inch Air Force Yellow; 1/16 inch Old Glory Red; 5/16 inch Air Force Yellow; and 1/8 inch Primitive Green.

(k) The Vietnam campaigns are provided in Table 7 below:

TABLE 7

Campaigns	Inclusive dates	Streamer Inscription
Vietnam Advisory Campaign	March 15, 1962 to March 7, 1965	Vietnam Advisory 1962–1965.
Vietnam Defense Campaign	March 8, 1965 to December 24, 1965	Vietnam Defense 1965.
Vietnam Counteroffensive	December 25, 1965 to June 30, 1966	Vietnam Counteroffensive 1965–1966.
Vietnam Counteroffensive Phase II	July 1, 1966 to May 31, 1967 (see footnote below).	Vietnam Phase II 1966, 1967.
Vietnam Counteroffensive Phase III	June 1, 1967 to January 29, 1968	Vietnam Counteroffensive, Phase III, 1967–1968.
Tet Counteroffensive	January 30, 1967 to April 1, 1968	Tet Counteroffensive 1968.
Vietnam Counteroffensive Phase IV	April 2, 1968 to June 30, 1968	Vietnam Counteroffensive, Phase IV 1968.
Vietnam Counteroffensive Phase V	July 1, 1968 to November 1, 1968	Vietnam Counteroffensive, Phase V 1968.
Vietnam Counteroffensive Phase VI	November 2, 1968 to February 22, 1969	Vietnam Counteroffensive, Phase VI 1968–1969.

TABLE 7—Continued

Campaigns	Inclusive dates	Streamer Inscription
Tet 69 Counteroffensive	February 23, 1969 to June 8, 1969	Tet 69/Counteroffensive, 1969.
Vietnam Summer-Fall 1969	June 9, 1969 to October 31, 1969	Vietnam Summer-Fall 1969.
Vietnam Winter-Spring 1970	November 1, 1969 to April 30, 1970	Vietnam Winter-Spring 1970.
Sanctuary Counteroffensive	May 1, 1970 to June 30, 1970	Sanctuary Counteroffensive 1970.
Vietnam Counteroffensive Phase VII	July 1, 1970 to June 30, 1971	Vietnam Counteroffensive, Phase VII, 1970–1971.
Consolidation I	July 1, 1971 to November 30, 1971	Consolidation I 1971.
Consolidation II	December 1, 1971 to March 29, 1972	Consolidation II 1971–1972.
Vietnam Cease-Fire	March 30, 1972 to January 28, 1973	Vietnam Cease-Fire 1972–1973.

Arrowhead device authorized only for members of the 173d Airborne Brigade who actually participated in the landing in the vicinity of Katum, Republic of Vietnam, between the hours of 0800–0907, inclusive on February 27, 1967. A bronze service star affixed to the Parachutist Badge is authorized for members of the 173d Airborne Brigade for participation in combat parachute jump on February 22, 1967 per Department of the Army General Orders 18, 1979.

§ 578.27 Southwest Asia Service Medal.

(a) The Southwest Asia Service Medal (SWASM) was established by Executive Order 12754, March 12, 1991. It is awarded to all members of the Armed Forces of the United States serving in Southwest Asia and contiguous waters or airspace thereover, on or after August 2, 1990 to November 30, 1995. Southwest Asia and contiguous waters, as used herein, is defined as an area which includes the Persian Gulf, Red Sea, Gulf of Oman, Gulf of Aden, that portion of the Arabian Sea that lies north of 10 degrees N. latitude and west of 68 degrees E. longitude, as well as the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and United Arab Emirates.

(b) Members of the Armed Forces of the United States serving in Israel, Egypt, Turkey, Syria, and Jordan (including the airspace and territorial waters) between January 17, 1991 and April 11, 1991, will also be eligible for this award. Members serving in these countries must have been under the command and control of U.S. Central Command or directly supporting military operations in the combat theater.

(c) To be eligible, a service member must meet one or more of the following criteria:

(1) Be attached to or regularly serving for one or more days with an organization participating in ground or shore (military) operations.

(2) Be attached to or regularly serving for one or more days aboard a naval vessel directly supporting military operations.

(3) Be actually participating as a crew member in one or more aerial flights directly supporting military operations in the areas designated in paragraphs (a) and (b) of this section.

(4) Be serving on temporary duty for 30 consecutive days or 60 nonconsecutive days. These time limitations may be waived for people participating in actual combat operations.

(d) The SWASM may be awarded posthumously to any person who lost his or her life while, or as a direct result of, participating in Operation DESERT SHIELD or Operation DESERT STORM without regard to the length of such service, if otherwise eligible.

(e) One bronze service star will be worn on the suspension and service ribbon of the SWASM for participation in each designated campaign. Service stars are described in § 578.61. The designated campaigns for Southwest Asia are provided in Table 8 below:

TABLE 8

Campaign	Inclusive dates	Streamer inscription
Defense of Saudi Arabia	August 2, 1990 to January 16, 1991	Defense of Saudi Arabia 1990–1991.
Liberation and Defense of Kuwait	January 17, 1991 to April 11, 1991	Liberation and Defense of Kuwait 1991.
Southwest Asia Cease-Fire	April 12, 1991 to November 30, 1995	Southwest Asia Cease-Fire, 1991–1995.

(f) See AR 670–20 for the Civilian Service in Southwest Asia Medal.

(g) *Description.* The medal is Bronze 1¼ inches wide, with the words ''SOUTHWEST ASIA SERVICE'' across the center background. Above the center is a desert scene with a tank, armored personnel carrier, helicopter and camels with the rising sun in the background. Below the center is a seascape with ship, tanker, aircraft and clouds in the background. On the reverse, is an upraised sword entwined with a palm frond and ''UNITED STATES OF AMERICA'' around the edge. The ribbon is 1⅜ inches wide and consists of the following stripes: 1/16 inch Black 67138; ⅛ inch Chamois 67142; 1/16 inch Old Glory Blue 67178; 1/16 inch White 67101; 1/16 inch Old Glory Red 67156; 3/16 inch Chamois; 3/32 inch Myrtle Green 67190; center 1/16 inch Black; 3/32 inch Myrtle Green; 3/16 inch Chamois; 1/16 inch Old Glory Red; 1/16 inch White; 1/16 inch Old Glory Blue; ⅛ inch Chamois; and 1/16 inch Black.

§ 578.28 Kosovo Campaign Medal.

(a) *Criteria.* The Kosovo Campaign Medal (KCM) was established by Executive Order 13154, May 3, 2000. It is awarded to members of the Armed Forces of the United States who, after March 24, 1999, meet the following criteria:

(1) Participated in or served in direct support of Kosovo Operation(s): ALLIED FORCE; JOINT GUARDIAN; ALLIEDHARBOUR; SUSTAIN HOPE/SHINING HOPE; NOBLE ANVIL; or Kosovo TASK FORCE(S): HAWK, SABER; or HUNTER within the Kosovo Air Campaign or Kosovo Defense Campaign areas of eligibility.

(i) *Kosovo Air Campaign.* The Kosovo Air Campaign began on March 24, 1999 and ended on June 10, 1999. The area of eligibility for the Air Campaign includes the total land area and air space of Serbia (including Kosovo), Montenegro, Albania, Macedonia, Bosnia, Croatia, Hungary, Romania, Greece, Bulgaria, Italy and Slovenia; and the waters and air space of the Adriatic

and Ionian Sea north of the 39th North latitude.

(ii) *Kosovo Defense Campaign.* The Kosovo Defense Campaign began on June 11, 1999 to a date to be determined. The area of eligibility for the Defense Campaign includes the total land area and air space of Serbia (including Kosovo), Montenegro, Albania, Macedonia, and the waters and air space of the Adriatic Seas within 12 nautical miles of the Montenegro, Albania, and Croatia coastlines south of 42 degrees and 52 minutes North latitude.

(2) Service members must be bona fide members of a unit participating in or be engaged in direct support of the operation for 30 consecutive days in the area of eligibility or for 60 nonconsecutive days provided this support involves entering the operations area of eligibility for meet one or more of the following criteria:

(i) Be engaged in actual combat, or duty that is equally as hazardous as combat duty, during the operation with armed opposition, regardless of time in the area of eligibility;

(ii) While participating in the operation, regardless of time, is wounded or injured and requires medical evacuation from the area of eligibility.

(iii) While participating as a regularly assigned aircrew member flying sorties into, out of, within, or over the area of eligibility in direct support of the military operations.

(b) The KCM may be awarded posthumously to any person who lost his or life without regard to the length of such service.

(c) One bronze service star will be worn on the suspension and service ribbon of the KCM for participation in each campaign (Kosovo Air Campaign and Kosovo Defense Campaign). Qualification for a second bronze service star requires meeting the criteria for both campaigns. The 30 consecutive or 60 nonconsecutive days that begin during the Air Campaign and continues into the Defense Campaign entitles a member to only one bronze service star.

(d) *Description.* The medal is bronze, 1⅜ inches in diameter, with the stylized wreath of grain, reflecting the agricultural domination of the area and its economy, symbolizes the basic human rights while highlighting the desire of all for peace, safety and prosperity. The rocky terrain, fertile valley, and mountain pass refer to the Dinartic Alps and the Campaign Theater of operations. The sunrise denotes the dawning of a new age of unity and hope; the right to forge a future of freedom, progress and harmony, thus fulfilling the goal of the Alliance. On the reverse an outline of the Yugoslavian Province of Kosovo, denoting the area of conflict, is combined with a NATO star and highlighted compass cardinal points, signifying the Alliance participants who stabilized the region and provided massive relief. The inscription ''IN DEFENSE OF HUMANITY'' reinforces the objective of the action. The ribbon is 1⅜ inches in width. It is composed of the following vertical stripes: 15/32 inches Old Glory Blue 67178; 7/64 inch Scarlet 67111; 5/32 inch White 67101; 7/64 inch Old Glory Blue 67178; 15/32 inch Scarlet 67111.

§ 578.29 Afghanistan Campaign Medal.

(a) The Afghanistan Campaign Medal is authorized by Public Law 108–234, May 28, 2004 and Executive Order 13363, November 29, 2004. It is authorized for award to individuals who served in direct support of Operation ENDURING FREEDOM. The area of eligibility encompasses all land area of the country of Afghanistan and all air spaces above the land. The period of eligibility is on or after October 24, 2001 to a future date to be determined by the Secretary of Defense or the cessation of Operation ENDURING FREEDOM.

(b) *Criteria.* Service members qualified for the Global War on Terrorism Expeditionary Medal by reasons of service between October 24, 2001 and February 28, 2005, in an area for which the Afghanistan Campaign Medal was subsequently authorized, shall remain qualified for that medal. Upon application, any such service member may be awarded the Afghanistan Campaign Medal in lieu of the Global War on Terrorism Expeditionary Medal for such service. No service member shall be entitled to both medals for the same act, achievement or period of service.

(c) *General.* Service members must have been assigned, attached, or mobilized to units operating in the area of eligibility for 30 consecutive days or for 60 non-consecutive days or meet one of the following criteria:

(1) Be engaged in combat during an armed engagement, regardless of the time in the area of eligibility.

(2) While participating in an operation or on official duties, is wounded or injured and requires medical evacuation from the area of eligibility.

(3) While participating as a regularly assigned air crewmember flying sorties into, out of, within or over the area of eligibility in direct support of the military operations; each day of operations counts as one day of eligibility.

(d) *Rules.* The following rules apply to award of the Afghanistan Campaign Medal:

(1) The Afghanistan Campaign Medal may be awarded posthumously.

(2) Only one award of this medal may be authorized for any individual.

(3) Under no condition shall personnel or units receive the Afghanistan Campaign Medal, the Global War on Terrorism Expeditionary Medal, the Global War on Terrorism Service Medal, the Iraq Campaign Medal, or the Armed Forces Expeditionary Medal for the same action, time period or service.

(e) *Precedence.* The Afghanistan Campaign Medal shall be positioned below the Kosovo Campaign Medal and above the Iraq Campaign Medal.

(f) *Description.* On a bronze metal 1⅜ inches (3.49 cm) in diameter above a range of mountains is a map of Afghanistan. Around the top is the inscription ''AFGHANISTAN CAMPAIGN.'' On the reverse, a radiating demisun superimposed by an eagle's head couped. Inscribed across the bottom half of the reverse side are the three lines ''FOR SERVICE'' ''IN'' ''AFGHANISTAN'' all enclosed by a laurel wreath. The ribbon is 1⅜ inches wide and consists of the following stripes: 5/64 inch Emerald 67128: 3/16 inch Scarlet 67111; ⅛ inch Black 67138; 7/32 inch White 67101; 1/32 inch Scarlet 67111; 1/32 inch White 67101; 1/32 inch Old Glory Blue 67178; 1/32 inch White 67101; 1/32 inch Scarlet 67111; 7/32 inch White 67101; ⅛ inch Black 67138; 3/16 inch Scarlet 67111; 5/64 inch Emerald 67128.

§ 578.30 Iraq Campaign Medal.

(a) The Iraq Campaign Medal is authorized by Public Law 108–234, May 28, 2004 and Executive Order 13363, November 29, 2004. It is authorized for award to individuals who have served in direct support of Operation IRAQI FREEDOM. The area of eligibility encompasses all land area of the country of Iraq, and the contiguous water area out to 12 nautical miles, and all air spaces above the land area of Iraq and above the contiguous water area out to 12 nautical miles. The period of eligibility is on or after March 19, 2003 to a future date to be determined by the Secretary of Defense or the cessation of Operation IRAQI FREEDOM.

(b) *Criteria.* Service members qualified for the Global War on Terrorism Expeditionary Medal by reasons of service between March 19, 2003 and February 28, 2005, in an area for which the Iraq Campaign Medal was subsequently authorized, shall remain qualified for that medal. Upon

application, any such service member may be awarded the Iraq Campaign Medal in lieu of the Global War on Terrorism Expeditionary Medal for such service. No service member shall be entitled to both medals for the same act, achievement or period of service.

(c) *General.* Service members must have been assigned, attached, or mobilized to units operating in the area of eligibility for 30 consecutive days or for 60 non-consecutive days or meet one of the following criteria:

(1) Be engaged in combat during an armed engagement, regardless of the time in the area of eligibility.

(2) While participating in an operation or on official duties, is wounded or injured and requires medical evacuation from the area of eligibility.

(3) While participating as a regularly assigned air crewmember flying sorties into, out of, within or over the area of eligibility in direct support of the military operations; each day of operations counts as one day of eligibility.

(d) *Rules.* The following rules apply to award of the Iraq Campaign Medal:

(1) The Iraq Campaign Medal may be awarded posthumously.

(2) Only one award of this medal may be authorized for any individual.

(3) Under no condition shall personnel receive the Iraq Campaign Medal, the Global War on Terrorism Expeditionary Medal, the Global War on Terrorism Service Medal, the Iraq Campaign Medal, or the Armed Forces Expeditionary Medal for the same action, time period or service.

(e) *Precedence.* The Iraq Campaign Medal shall be positioned below the Afghanistan Campaign Medal and above the Global War on Terrorism Expeditionary Medal.

(f) *Description.* On a bronze metal 1/38 inches (3.49 cm) in diameter the relief of Iraq, surmounted by two lines throughout, surmounting a palm wreath. Above is the inscription ''IRAQ CAMPAIGN.'' On the reverse, the Statue of Freedom surmounting a sunburst, encircled by two scimitars points down crossed at tip of blades, all above the inscription ''FOR SERVICE IN IRAQ.'' The ribbon is 1 3/8 inches wide and consists of the following stripes: 5/32 inch Scarlet 67111; 1/16 inch White 67101; 1/32 inch Green 67129; 1/16 inch White 67101; 5/32 inch Black 67138; 7/16 inch Chamois 67142; 5/32 inch Black 67138; 1/16 inch White 67101; 1/32 inch Green 67129; 1/16 inch White 67101; 5/32 inch Scarlet 67111.

§ 578.31 Global War on Terrorism Expeditionary Medal.

(a) The Global War on Terrorism Expeditionary Medal (GWOTEM) was established by Executive Order 13289, March 12, 2003. It is authorized for award to members of the Armed Forces of the United States who deploy abroad for service in the Global War on Terrorism operations on or after September 11, 2001 to a date to be determined. Operations approved for the GWOTEM are provided in paragraph (g) of this section.

(b) *Procedures.* (1) The Secretary of Defense in consultation with the Chairman, Joint Chiefs of Staff will designate approved operations on a case-by-case basis when requested by the Combatant Commanders.

(2) The general area of eligibility (AOE) encompasses all foreign land, water, and air spaces outside the fifty states of the United States and outside 200 nautical miles of the shores of the United States. The Secretary of Defense, when recommended by the Chairman, Joint Chiefs of Staff, shall designate the specific area of eligibility per qualifying operation.

(3) Because counter-terrorism operations are global in nature, the AOE for an approved operation may be deemed to be non-contiguous. The Combatant Commander has the authority to approve award of the medal for units and personnel deployed within his or her theater. Under no conditions will units or personnel within the United States, the general region excluded in paragraph (b)(2) this section be deemed eligible for the GWOTEM.

(c) *Criteria.* Service members must be assigned, attached or mobilized to a unit participating in designated operations for 30 consecutive days or 60 nonconsecutive days in the AOE, or meet one of the following criteria:

(1) Be engaged in actual combat against the enemy and under circumstances involving grave danger of death or serious bodily injury from enemy action, regardless of time in the AOE.

(2) While participating in the designated operation, regardless of time, is killed, wounded or injured requiring medical evacuation from the AOE.

(3) Service members participating as a regularly assigned air crew member flying sorties into, out of, within, or over the AOE in direct support of Operations Enduring Freedom and/or Iraqi Freedom are eligible to qualify for award of the GWOTEM. Each day that one or more sorties are flown in accordance with these criteria shall count as one day toward the 30 or 60 day requirement.

(d) *General.* (1) The GWOTEM may be awarded posthumously.

(2) Service members may be awarded both the GWOTEM and the Global War on Terrorism Service Medal (GWOTSM) if they meet the criteria for both awards; however, the qualifying period of service used to establish eligibility for one award cannot be used to justify eligibility for the other award.

(3) *Order of Precedence.* The GWOTEM will be worn before the GWOTSM and both shall directly follow the Kosovo Campaign Medal (KCM) (i.e., KCM, GWOTEM, GWOTSM, Korea Defense Service Medal (KDSM), etc.).

(4) *Subsequent awards.* Only one award of the GWOTEM may be authorized to any individual; therefore, an appurtenance (e.g., oak leaf cluster, bronze service star) is authorized for wear on the GWOTEM.

(e) *Battle stars.* (1) Battle stars may be applicable for service members who were engaged in actual combat against the enemy and under circumstances involving grave danger of death or serious bodily injury from enemy action. Only the Combatant Commander can initiate a request for a Battle Star. The request will contain the specific unit(s) or individual(s) engaged in actual combat, the duration for which actual combat was sustained, and a detailed description of the actions against the enemy.

(2) The Chairman, Joint Chiefs of Staff (CJCS) is the approving authority for Battle Stars.

(3) The approval of battle stars by the CJCS is the authority for the senior Army commander in the combat theater to approve campaign participation credit. See paragraph 7–18, Table 7–1 and Figure 7–1, AR 600–8–22.

(f) *Approved operations.* Initial award of the GWOTEM is limited to service members deployed abroad in Operations ENDURING FREEDOM and IRAQI FREEDOM in the following designated specific geographic areas of eligibility AOE: Afghanistan, Bahrain, Bulgaria (Bourgas), Crete, Cyprus, Diego Garcia, Djibouti, Egypt, Eritrea, Ethiopia, Iran, Iraq, Israel, Jordan, Kazahstan, Kenya, Kuwait, Kyrgyzstan, Lebanon, Oman, Pakistan, Philippines, Qatar, Romania (Constanta), Saudi Arabia, Somalia, Syria, Tajikstan, Turkey (east of 35 degrees east latitude), Turkmenistan, United Arab Emirates, Uzbekistan, Yemen, that portion of the Arabian Sea north of 10 degrees north latitude and west of 68 degrees longitude, Bab El Mandeb, Gulf of Aden, Gulf of Aqaba, Gulf of Oman, Gulf of Suez, that portion of the Mediterranean Sea east of 28 degrees east longitude, Persian Gulf,

Red Sea, Strait of Hormuz, and Suez Canal.

(g) *Description.* (1) Ribbon. The different topographies our Armed Forces operate in are represented by the colors tan for the deserts, green for the grass or woodlands, blue for the waterways and white for the snowy regions. Blue also alludes the atmosphere, the zone of airstrikes. Gold is emblematic of excellence and high achievement. The red, white and blue stripes at center highlight this nation's role in the global war on terrorism.

(2) Obverse. The eagle, strong, keen of eye and vigilant, represents the United States and our resolve to make the world safe from the terrorism. The polestar and globe highlight the worldwide scope of this mission to secure our freedoms.

(3) Reverse. The torch and fasces denote freedom and justice. The laurel represents honor and high esteem.

§ 578.32 Global War on Terrorism Service Medal.

(a) The Global War on Terrorism Service Medal (GWOTSM) was established by Executive Order 13289, March 12, 2003. It is authorized for award to members of the Armed Forces of the United States who have participated in or served in support of the Global War on Terrorism operations outside of the designated areas of eligibility defined in § 578.31 of this part, on or after September 11, 2001 to a future date to be determined. Operations approved for the GWOTSM are provided in paragraph (e) of this section.

(b) *Procedures.* (1) The Chairman, Joint Chiefs of Staff will designate approved operations on a case-by-case basis when requested by the Combatant Commanders.

(2) At the request of the Combatant Commander, the Chairman, Joint Chiefs of Staff may approve specific efforts that are rendered by unit(s) or individual(s) that meet all other requirements for award of the Global War on Terrorism Service Medal however, are not issued specific orders for the approved operation(s).

(3) Battalion commanders and commanders of separate units have the authority to award the Global War on Terrorism Service Medal for approved operations to units and personnel within his or her command.

(c) *Criteria.* Service members must be assigned, attached; or mobilized to a unit supporting designated operations listed in § 578–31 of this part for 30 consecutive days or for 60 nonconsecutive days, or meet one of the following criteria:

(1) Initial award of the Global War on Terrorism Service Medal will be limited to airport security operations from September 27, 2001 through May 31, 2002 and service members who supported Operations NOBLE EAGLE, ENDURING FREEDOM, and IRAQI FREEDOM.

(2) All service members on active duty, including Reserve Components mobilized, or National Guardsmen activated on or after September 11, 2001 to a date to be determined having served 30 consecutive days or 60 nonconsecutive days are authorized the Global War on Terrorism Service Medal.

(d) *General.* (1) The GWOTSM may be awarded posthumously.

(2) Service members may be awarded both the GWOTEM and the GWOTSM if they meet the requirements of both awards; however, the qualifying period used to establish eligibility for one cannot be used to justify eligibility for the other award.

(3) *Order of Precedence.* The GWOTSM will be worn directly below the GWOTEM and both shall directly follow the Kosovo Campaign Medal.

(4) *Subsequent awards.* Only one award of the GWOTSM may be authorized for any individual; therefore, an appurtenance (*e.g.*, oak leaf cluster, bronze service star) is not authorized.

(e) *Approved operations.* Initial approved operations for the Global War on Terrorism Service Medal are Airport Security Operations from September 27, 2001 through May 31, 2002 and Operations NOBLE EAGLE, ENDURING FREEDOM and IRAQI FREEDOM.

(f) *Description.* (1) Ribbon. The dark red stripe denotes sacrifice. The gold stripes symbolize achievement. The blue stripes signify justice.

(2) Obverse. The obverse has a stylized globe, the universal symbol of the world. Surmounting the globe is six arrows exemplifying fighting power and readiness, also representing the area that terrorism is being fought; diplomatic, military, financial, intelligence, investigative and law enforcement. Below, a olive branch exemplifies peace and an oak branch emphasizing strength and protection.

(3) Reverse. The reverse is inscribed 'FOR INTERNATIONAL RESPONSES AGAINST TERRORISM' between three stars commemorate achievement and below the year '2002'.

§ 578.33 Korea Defense Service Medal.

(a) *Eligibility Requirements.* The Korea Defense Service Medal (KDSM) was authorized by Section 543, 2003 National Defense Authorization Act. It is awarded to members of the Armed Forces who have served on active duty in support of the defense of the Republic of Korea from July 28, 1954 to a date to be determined.

(1) The area of eligibility encompasses all land area of the Republic of Korea, and the contiguous water out to 12 nautical miles, and all air spaces above the land and water areas.

(2) The KDSM period of eligibility is July 28, 1954, to a future date to be determined by the Secretary of Defense.

(b) *Specific.* Service members must have been assigned, attached, or mobilized to units operating in the area of eligibility for 30 consecutive or for 60 nonconsecutive days, or meet the following criteria:

(1) Be engaged in combat during an armed engagement, regardless of the time in the area of eligibility.

(2) Is wounded or injured in the line of duty and requires medical evacuation from the area of eligibility.

(3) While participating as a regularly assigned air crewmember flying sorties into, out of, or within the area of eligibility in direct support of military operations. Each day that one or more sorties are flown in accordance with these criteria shall count as one day toward the 30 or 60-day requirement.

(4) Personnel who serve in operations and exercises conducted in the area of eligibility are considered eligible for the award as long as the basic time criteria is met. Due to the extensive time period for KDSM eligibility, the nonconsecutive service period for eligibility remains cumulative throughout the entire period.

(c) *Awarding.* (1) The KDSM may be awarded posthumously.

(2) Only one award of the KDSM is authorized for any individual.

(d) *Precedence.* The KDSM shall be positioned below the Global War on Terrorism Service Medal in precedence; and shall be positioned above the Armed Forces Service Medal.

(e) *Description.* The ribbon is dark green represents the land of Korea, blue indicates overseas service and commitment to achieving peace. Gold denotes excellence, white symbolizes idealism and integrity. The obverse is a bronze-color disc bearing a Korean ''circle dragon'' within an encircling scroll inscribed ''Korea Defense Service Medal'' with, in base, two sprigs, laurel to dexter side, bamboo to sinister. The four-clawed dragon is a traditional symbol of Korea and represents intelligence and strength of purpose. The sprig of laurel denotes honorable endeavor and victory, the bamboo refers to the land of Korea. The reverse is a representation of the land mass of Korea surmounted by two swords points up saltirewise within a circlet garnished of

five points. The swords placed saltirewise over a map of Korea signify defense of freedom in that country and the readiness to engage in combat to that end. The circlet enclosing the device recalls the forms of five-petal symbols common in Korean armory.

§ 578.34 Armed Forces Service Medal.

(a) *Criteria.* The Armed Forces Service Medal (AFSM) was established by Executive Order 12985, January 11, 1996. It is awarded to members of the Armed Forces of the United States who, after June 1, 1992 meet the following criteria:

(1) Participate, or have participated, as members of U.S. military units, in a U.S. military operation that is deemed to be a significant activity; and

(2) Encounter no foreign armed opposition or imminent threat of hostile action.

(b) *Eligibility requirements.* To qualify for award of the AFSM service members must be bona fide members of a unit participating for one or more days in the operation within the designated area of eligibility, or meet one or more of the following criteria:

(1) Be engaged in direct support for 30 consecutive days in the area of eligibility (or for the full period when an operation is of less than 30 days duration) or for 60 nonconsecutive days provided this support involves entering the area of eligibility.

(2) Participate as a regularly assigned crew member of an aircraft flying into, out of, within, or over the area of eligibility in support of the operation.

(c) *Qualifying operations.* (1) The AFSM may be authorized for significant U.S. military activities for which no other U.S. campaign or service medal is appropriate, such as—

(i) Peacekeeping operations.

(ii) Prolonged humanitarian operations.

(2) The AFSM may be awarded for U.S. military operations in direct support of the United Nations (UN) or the North Atlantic Treaty Organization (NATO), and for operations of assistance to friendly foreign nations.

(d) *General criteria.* (1) The AFSM provides recognition to participants who deploy to the designated area of eligibility for the qualifying operation. Outstanding or meritorious performance of non-deployed or remotely located support units and individuals is not justification for award of the AFSM. Such performance may be recognized by appropriate unit and/or individual decorations.

(2) Because the AFSM may be awarded for a prolonged humanitarian operation, distinction between the AFSM and the Humanitarian Service Medal (HSM) must be maintained. The following rules apply:

(i) The HSM is an individual U.S. service medal, presented to individuals who are physically present at the site of immediate relief and who directly contribute to and influence the humanitarian action. The HSM is only awarded for service during the identified ''period of immediate relief''; eligibility for the HSM terminates once (if) the humanitarian action evolves into an ''established ongoing operation beyond the initial emergency condition.''

(ii) The AFSM is a theater award, authorized for presentation to all participants who meet the eligibility requirements established for a designated operation.

(iii) For operations in which all deployed participants are awarded the HSM and for which the ''period of immediate relief'' coincides with the duration of significant deployed operations, award of the AFSM is not authorized.

(iv) Humanitarian operations for which some (or all) participants are awarded the HSM, which continue beyond the ''period of immediate relief,'' may be recognized by award of the AFSM. The AFSM may be awarded for the entire period of the operation; individuals awarded the HSM for direct participation during the ''period of immediate relief'' are also eligible for the AFSM if awarded.

(e) *Limitations on awarding the AFSM.* The following limitations apply when determining whether the AFSM should be awarded for a particular mission or operation or when determining eligibility for award to an individual:

(1) The AFSM shall be awarded only for operations for which no other U.S. campaign or service medal is approved.

(2) For operations in which personnel for only one Service participates, the AFSM shall be awarded only if there is no other suitable award available to that Service.

(3) The military service of the individual on which qualification for the award of the AFSM is based shall have been honorable.

(4) Award of the AFSM is not authorized for participation in national or international exercises.

(5) The AFSM will not be awarded for NATO or United Nations operations not involving significant, concurrent U.S. military support operations.

(f) *Approval and designation of area of eligibility.*

(1) *Approval of operations.* The Chairman of the Joint Chiefs of Staff (CJCS) shall designate U.S. military operations subsequent to June 1, 1992 that qualify for the AFSM.

(2) *Designation of area of eligibility.* (i) The CJCS shall specify the qualifying area of eligibility for award of the AFSM.

(ii) Prior to submission to the CJCS for consideration, the proposed qualifying area of eligibility will be coordinated with the Joint Chiefs of Staff and the Commander in Chiefs (CINCs) to ensure all appropriate locations are included.

(iii) Upon the recommendation of a CINC and in coordination with the Joint Chiefs of Staff, the CJCS may adjust the area of eligibility to reflect changes in the location, scope and degree of participation of forces deployed to, and in direct support of, an operation for which the AFSM has been awarded.

(g) *Subsequent awards.* No more than one medal shall be awarded to any one Service member. One bronze service star is worn to denote second and subsequent awards of the AFSM. To be eligible for additional awards, service must be rendered in more than one designated area and period of service. No two awards will be made for service in the same designated area. (Service stars are described in § 578.61)

(h) *Manner of wearing.* The AFSM shall take precedence immediately after the Southwest Asia Service Medal.

(i) *Posthumous awards.* The AFSM may be awarded posthumously to eligible soldier's primary next of kin (primary next of kin is defined in the Glossary).

(j) Designated U.S. military operations, area and dates are as follows:

(1) Operations PROVIDE PROMISE, JOINT ENDEAVOR, ABLE SENTRY, DENY FLIGHT, MARITME MONITOR, and SHARP GUARD, from November 20, 1995 to December 19, 1996.

(2) Operation JOINT GUARD from December 20, 1996 to June 20, 1998.

(3) Operation JOINT FORGE from June 21, 1998 to a date to be determined.

(4) Operation UNITED NATIONS MISSION in HAITI; U.S. FORCES in HAITI and U.S. SUPPORT GROUP-HAITI from April 1, 1995 to January 31, 2000.

(5) Operation PROVIDE COMFORT from December 1, 1995 to December 31, 1996.

(k) See AR 672–20 for the Armed Forces Civilian Service Medal.

(l) *Description.* The medal is Bronze, 1¼ inches in diameter with a demi-torch (as on the Statue of Liberty) encircled at the top by the inscription ''ARMED FORCES SERVICE MEDAL'' on the obverse side. On the reverse side

is an eagle (as on the seal of the DOD) between a wreath of laurel in base and the inscription ''IN PURSUIT OF DEMOCRACY'' at the top. The ribbon is 1⅜ inches wide and consists of the following stripes: 1/16 inch Goldenlight 67107; ⅛ inch Jungle Green 67191; ⅛ inch Green 67129; ⅛ inch Mosstone 67127; ⅛ inch Goldenlight; Center ¼ inch Bluebird 67117; ⅛ inch Goldenlight; ⅛ inch Mosstone; ⅛ inch Green; ⅛ inch Jungle Green; and 1/16 inch Goldenlight.

§ 578.35 Humanitarian Service Medal.

(a) *Criteria.* The Humanitarian Service Medal (HSM) was established by Executive Order 11965, January 19, 1977. It is awarded to members of the Armed Forces of the United States who, after April 1, 1975, distinguished themselves by meritorious direct participation in a DOD approved significant military act or operation of a humanitarian nature. It is not awarded for participation in domestic disturbances involving law enforcement, equal rights to citizens, or protection of properties.

(b) To be eligible, a service member must meet the following requirements:

(1) Must be on active duty at the time of direct participation in a DOD approved humanitarian act or operation. ''Active duty'' means full-time duty in the active military service of the United States. It includes duty on the active duty list, full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a Service school by law or by the Secretary of the Military Department concerned per 10 U.S.C. 101(22). This includes service as a cadet at the U.S. Military Academy. Members of the Army National Guard are eligible provided that the use of active forces has been authorized in the act or operation.

(2) Must have directly participated in the humanitarian act or operation within the designated geographical area of operation and within specified time limits. ''Direct participation'' is defined as ''hands on'' activity at the site or sites of the military act or operation. Specifically excluded from eligibility for this medal are personnel or elements remaining at geographically separated military headquarters.

(3) Must provide evidence which substantiates direct participation in a DOD approved humanitarian act or operation except when by-name eligibility lists are published. Acceptable evidence includes the following:

(i) Certificates, letters of commendation or appreciation.

(ii) Officer or enlisted evaluation reports.

(iii) Copies of TDY or special duty orders reflecting participation within the specified timeframe and geographical location cited.

(iv) After-action reports, situation reports, rosters, unit files or any other records or documentation which verify the service members participation.

(v) Statements from commanders, supervisors, or other officials who were in a position to substantiate the service members direct participation in the area of operation.

(c) The HSM is a U.S. service medal and does not preclude or conflict with other service medals or decorations awarded on the basis of valor, achievement or meritorious service.

(d) No person will be awarded more than one HSM for participation in the same military act or operation.

(e) A service star will be worn to denote direct participation in second or subsequent humanitarian acts or operations. The approved HSM operations are provided in AR 600–8–22 and the HQDA Military Awards Branch Web site *https://www.perscomonline.army.mil/tagd/awards/HSM.doc*.

(f) See AR 672–20 for Civilian Award for Humanitarian Service.

(g) *Description.* The medal is Bronze, 1¼ inches in diameter, surmounted by an open hand, palm up, extending to the upper left. On the reverse is a sprig of oak in a left oblique slant between the inscription ''FOR HUMANITARIAN SERVICE'' in three horizontal lines, and ''UNITED STATES ARMED FORCES'' in an arc around the base. The ribbon is 1⅜ inches wide and consists of the following stripes: 3/16 inch Imperial Purple 67161; 1/16 inch White 67101; 5/16 inch Bluebird 67117; ¼ inch Flag Blue 67124; 5/16 inch Bluebird; 1/16 inch White; and 3/16 inch Imperial Purple.

§ 578.36 Military Outstanding Volunteer Service Medal.

(a) *Criteria.* The Military Outstanding Volunteer Service Medal (MOVSM) was established by Executive Order 12830, January 9, 1993. It may be awarded to members of the Armed Forces of the United States and their Reserve Components, who subsequent to December 31, 1992, perform outstanding volunteer community service of a sustained, direct and consequential nature.

(b) To qualify for award of the MOVSM a service members volunteer service must meet the following requirements:

(1) Be to the civilian community, to include the military family community.

(2) Be significant in nature and produce tangible results.

(3) Reflect favorably on the Military Service and the DOD.

(4) Be of a sustained and direct nature.

(c) While there is no specific time period to qualify for the MOVSM (for example, 500 hours of community service within 24 calendar months), approval authorities shall ensure the service to be honored merits the special recognition afforded by this medal. The MOVSM is intended to recognize exceptional community support over time and not a single act or achievement. Further, it is intended to honor direct support of community activities. For the purpose of this award, attending membership meetings or social events of a community service group is not considered qualifying service, while manning a community crisis action telephone line is considered qualifying service.

(d) Approval authority for award of the MOVSM will be commanders (overseas and CONUS (continental United States) serving in the rank of Lieutenant Colonel or higher. Before the recommendation is forwarded to the award approval authority, the recommender must certify that the service member meets the eligibility criteria for award of the MOVSM. Substantiating documentation, such as record of hours contributed, letters or certificates from activity supervisors, or other proof of the service member's volunteer services may be attached as enclosures to the recommendation.

(e) *Description.* The medal is Bronze, 1⅜ inches in diameter bearing on the obverse, five annulets interlaced enfiled by a star and environed by a wreath of laurel. On the reverse is a sprig of oak between the inscription ''OUTSTANDING VOLUNTEER SERVICE'' at the top and ''UNITED STATES ARMED FORCES'' at the bottom. The ribbon is 1⅜ inches wide and consists of the following stripes: ⅛ inch Bluebird 67117; ⅛ inch Goldenlight 67107; 3/16 inch Bluebird; 1/16 inch Green 67129; 5/32 inch Goldenlight; center 1/16 inch Green; 5/32 inch Goldenlight; 1/16 inch Green; 3/16 inch Bluebird; ⅛ inch Goldenlight; and ⅛ inch Bluebird

§ 578.37 Army Good Conduct Medal.

(a) *Criteria.* The Army Good Conduct Medal (AGCM) was established by Executive Order 8809, June 28, 1941 and was amended by Executive Order 9323, 1943 and by Executive Order 10444, April 10, 1953. It is awarded for exemplary behavior, efficiency, and fidelity in active Federal military

service. It is awarded on a selective basis to each soldier who distinguishes himself or herself from among his or her fellow soldiers by his exemplary conduct, efficiency, and fidelity throughout a specified period of continuous enlisted active Federal military service. There is no right or entitlement to the medal until the immediate commander has approved the award and the award has been announced in permanent orders.

(b) *Personnel eligible:* (1) Active Component enlisted soldiers.

(2) Active Guard Reserve (AGR) enlisted personnel serving on extended periods of active duty (other than for training) under 10 U.S.C. and 32 U.S.C. are eligible for award of the AGCM for qualifying service beginning on or after September 1, 1982, provided no period of the service has been duplicated by the same period of service for which the soldier has been awarded the Army Reserve Components Achievement Medal (ARCAM). The AGCM qualification period may commence anytime during the 3 years immediately preceding the September 1, 1982 effective date provided no portion of service for the AGCM is included in a period of service for which the ARCAM was awarded.

(3) Retroactively to eligible Army of the United States (AUS) enlisted personnel.

(4) Other Army enlisted personnel as may be directed by the Secretary of the Army.

(c) *Awarding authority.* Unit commanders are authorized to award the AGCM to enlisted personnel serving under their command jurisdiction who meet the established criteria. Send requests for award of the AGCM for former soldiers to NPRC (see § 578.8(e) for address). Requests for award of the AGCM for Army National Guard and Army Reserve members for periods of active duty based on qualifying prior active Federal military service (Regular Army and AUS) will be forwarded through normal command channels to the Commander, USA HRC–St. Louis, ATTN: ARPC–PSP–R, One Reserve Way, St. Louis, MO 63132–5200. Separation transfer points will review the records of enlisted personnel being separated to determine whether they qualify for the AGCM. Where possible, make a reasonable effort to contact the unit commander before awarding the medal to qualified members.

(d) *Basis for approval.* The immediate unit commander's decision to award the AGCM will be based on his or her personal knowledge and of the individual's official records for periods of service under previous commanders during the period for which the award is to be made. The lack of official disqualifying comment by such previous commanders qualifies the use of such period toward the award by current commander.

(e) *Qualifying periods of service.* Any one of the following periods of continuous enlisted active Federal military service qualifies for award of the AGCM or of an AGCM Clasp (see paragraph (h) of this section in conjunction with the criteria in paragraph (f) of this section):

(1) Each 3 years completed on or after August 27, 1940.

(2) For first award only, 1 year served entirely during the period December 7, 1941 to March 2, 1946.

(3) For first award only, upon termination of service on or after June 27, 1950, of less than 3 years but more than 1 year.

(4) For first award only, upon termination of service, on or after June 27, 1950, of less than 1 year when final separation was by reason of physical disability incurred in line of duty.

(5) For first award only, for those individuals who died before completing 1 year of active Federal military service if the death occurred in the line of duty.

(f) *Character of service.* Throughout a qualifying period, each enlisted soldier must meet all of the following criteria for an award:

(1) The immediate commander evaluates the soldier's character as above reproach.

(2) The record of service indicates that the soldier has—

(i) Willingly complied with the demands of the military environment.

(ii) Been loyal and obedient to their superiors.

(iii) Faithfully supported the goals of their organization and the Army.

(iv) Conducted themselves in such an exemplary manner as to distinguish them from their fellow soldiers.

(3) While any record of non-judicial punishment could be in conflict with recognizing the soldier's service as exemplary, such record should not be viewed as automatically disqualifying. The commander analyzes the record, giving consideration to the nature of the infraction, the circumstances under which it occurred and when. Conviction by court-martial terminates a period of qualifying service; a new period begins following the completion of sentence imposed by court-martial.

(4) In terms of job performance, the soldier's efficiency must be evaluated and must meet all requirements and expectations for that soldier's grade, Military Occupational Specialty (MOS), and experience.

(5) Individuals whose retention is not warranted under standards prescribed in AR 604–10, or for whom a bar to reenlistment has been approved under the provisions of AR 601–280, chapter 6 (specifically for the reasons enumerated in paragraphs 6–4a, b, and d), are not eligible for award of the AGCM.

(g) *Additional implementing instructions.* (1) Qualifying periods of service (paragraph (e) of this section) must be continuous enlisted active Federal military service. When an interval in excess of 24 hours occurs between enlistments, that portion of service before to the interruption is not creditable toward an award.

(2) Release from enlisted status for entry into service as a cadet or midshipman at any U.S. service academy, or discharge from enlisted status for immediate entry on active duty in an officer status is considered termination of service for awarding the AGCM. A minimum of 12 months enlisted service is required and must have been completed for first award of the AGCM; otherwise, the full 3 years of qualifying enlisted service is required.

(3) A qualified person scheduled for separation from active Federal military service should receive the award at his or her last duty station. Such award is authorized up to 30 days before the soldier's departure en route to a separation processing installation in CONUS or overseas. Orders announcing such advance awards will indicate the closing date for the award prefixed with date of separation, on or about, as the response to the ''Dates or period of service'' lead line. Example: From October 31, 1977 to date of separation on or about October 30, 1980. For soldiers who are granted terminal leave prior to retirement or End Tour of Service (ETS), orders awarding second and subsequent awards of the AGCM may be issued up to 90 days before retirement or ETS date.

(4) An award made for any authorized period of less than 3 years must be for the total period of obligated active Federal military service. This applies to first award only, all other awards of the AGCM require 3 full years qualifying service.

(5) Discharge under provisions of AR 635–200 for immediate (re)enlistment is not termination of service.

(h) *Disqualification for the Army Good Conduct Medal.* (1) Conviction by courts-martial terminates a period of qualifying service; a new period begins the following day after completion of the sentence imposed by the court-martial.

(2) Individual whose retention is not warranted under standards prescribed in AR 604–10, or for whom a bar to reenlistment has been approved under the provisions of AR 601–280, chapter 6 (specifically for the reasons enumerated in, paragraphs 6–4a, b, and d, AR 601–280), are not eligible for award of the AGCM.

(3) In instances of disqualification as determined by the unit commander, the commander will prepare a statement of the rationale for his or her decision. This statement will include the period of disqualification and will be referred to the individual according to AR 600–37. The unit commander will consider the affected individual's statement. If the commander's decision remains the same, the commander will forward his or her statement, the individual's statement, and his or her consideration for filing in the individual's military record.

(4) Disqualification for an award of the AGCM can occur at any time during a qualifying period (for example, when manner of performance or efficiency declines). The custodian of the soldier's record will establish the new ''beginning date'' for the soldier's eligibility for award of the AGCM, annotate the date on the soldier's DA Form 2–1, and submit an automated transaction. These procedures do not apply if soldier disqualified under the provisions of paragraph (h)(2) of this section.

(i) *Subsequent awards and clasps.* A clasp is authorized for wear on the AGCM to denote a second or subsequent award. Clasps authorized for second and subsequent award are:

(1) Award: 2d; Clasp: Bronze, 2 loops;

(2) Award: 3d; Clasp: Bronze, 3 loops;

(3) Award: 4th; Clasp: Bronze, 4 loops;

(4) Award: 5th; Clasp: Bronze, 5 loops;

(5) Award: 6th; Clasp: Silver, 1 loop;

(6) Award: 7th; Clasp: Silver, 2 loops;

(7) Award: 8th; Clasp: Silver, 3 loops;

(8) Award: 9th; Clasp: Silver, 4 loops;

(9) Award: 10th; Clasp: Silver, 5 loops;

(10) Award: 11th; Clasp: Gold, 1 loop;

(11) Award: 12th; Clasp: Gold, 2 loops;

(12) Award: 13th; Clasp: Gold, 3 loops;

(13) Award: 14th; Clasp: Gold, 4 loops; and

(14) Award: 15th; Clasp: Gold, 5 loops.

(j) *Army Good Conduct Medal certificate policy.* (1) The DA Form 4950 (Good Conduct Medal Certificate) may be presented to enlisted soldiers only on the following occasions:

(i) Concurrent with the first award of the AGCM earned on or after January 1, 1981.

(ii) Concurrent with retirement on or after January 1, 1981.

(2) When presented at retirement, the DA Form 4950 will reflect the last approved award of the AGCM earned by the soldier before retirement. The number of the last earned will be centered immediately beneath the line ''THE GOOD CONDUCT MEDAL;'' for example, ''Sixth Award.'' The period shown on the certificate will be the period cited in the last award earned by the soldier. The words ''UPON HIS OR HER RETIREMENT'' may be typed below the soldier's name.

(3) The DA Form 4950 will not be presented for second or subsequent awards of the AGCM except as provided in paragraph (j)(2) of this section.

(4) DA Form 4950 is available from the U.S. Army Publications Distribution Center, St. Louis, MO.

(k) *Retroactive award.* (1) Retroactive award to enlisted personnel, and to officer personnel who qualified in an enlisted status, is authorized provided evidence is available to establish qualification. Where necessary, to correct conflicting or duplicate awards, previous general or permanent orders may be revoked and new orders published, citing this paragraph as authority.

(2) Requests for retroactive awards to enlisted persons which cannot be processed due to lack of information will be forwarded to Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249–5301, by the commander having command jurisdiction. Upon receipt of eligibility information from U.S. Army Enlisted Records and Evaluation Center (USAEREC), the commander can take action to confirm retroactive award of the AGCM by publication of orders, or by informing the soldier of findings of ineligibility.

(l) *Description.* The medal is Bronze, 1¼ inches in diameter, with an eagle, wings spread, standing on a closed book and sword, encircled by the words ''EFFICIENCY HONOR FIDELITY''. On the reverse is a five-pointed star and a scroll between the words ''FOR GOOD'' and ''CONDUCT'', surrounded by a wreath formed by a laurel branch on the left and an oak branch on the right. Clasps are placed on the ribbon to represent subsequent awards. The ribbon is A 1⅜ inches ribbon consisting of the following stripes: 1/16 inch Soldier Red 67157; 1/16 inch White 67101; 1/16 inch Soldier Red; 1/16 inch White; 1/16 inch Soldier Red; 1/16 inch White; center ⅝ inch Soldier Red; 1/16 inch White; 1/16 inch Soldier Red; 1/16 inch White; 1/16 inch Soldier Red; 1/16 inch White; and 1/16 inch Soldier Red.

§ 578.38 Army Reserve Components Achievement Medal.

(a) *Criteria.* The Army Reserve Components Achievement Medal (ARCAM) was established by the Secretary of the Army on March 3, 1971 and amended by Department of the Army General Orders (DAGO) 4, 1974. It is awarded for exemplary behavior, efficiency, and fidelity while serving as a member of an Army National Guard (ARNG) or USAR troop program unit (TPU) or as an individual mobilization augmentee (IMA). The first design bears the inscription ''United States Army Reserve,'' the other design bears the inscription, ''Army National Guard.''

(b) *Personnel eligible.* The ARCAM is authorized for award to Army personnel including Active Guard Reserve (AGR) officers in the rank of colonel and below. Individual must have been a member of an ARNG unit or USAR TPU, excluding enlisted soldiers in an AGR status. AGR enlisted soldiers are eligible for the AGCM under the provisions of § 578.37(b). The medal is also awarded to USAR soldiers serving as IMA after completing qualifying service and on recommendation of the unit commander or HQDA official to which the IMA is assigned.

(c) *Award approval authority.* Approval authority for award of the ARCAM for ARNG units and USAR TPU soldiers is the soldier's unit commander. Commander, USA HRC-St. Louis, One Reserve Way, St. Louis, MO 63132–5200, is the approval authority for award of the ARCAM to USAR IMA soldiers. Orders are not published for the award of this medal. Approved ARCAM is announced using an official memorandum. The records custodian will then annotate the records.

(d) *Peacetime and wartime applicability.* The ARCAM is awarded to eligible Army Reserve Component soldiers during times of peace and war. However, during periods of war, the length of qualifying service is subject to change at the discretion of the Secretary of the Army.

(e) *Basis or criteria for approval.* (1) Between March 3, 1972 and March 28, 1995, the medal was authorized on completion of 4 years' service with a Reserve Component unit. Individual must have completed 4 years of qualifying service on or after March 3, 1972 and before March 28, 1995. A qualifying year of service is one in which a Reserve soldier earns a minimum of 50 retirement points during his/her retirement year. Qualifying

service for computation purposes is based only by retirement ending year dates.

(2) Effective March 28, 1995, the period of qualifying service for award of the ARCAM is reduced from 4 to 3 years. That is, soldiers completing 3 years of qualified service on or after March 28, 1995 are eligible for ARCAM consideration. This change is not retroactive.

(3) All awards of the ARCAM must be made under the following conditions:

(i) Such years of qualifying service must have been consecutive. A period of more than 24 hours between Reserve enlistments or officer's service will be considered a break in service. Credit toward earning the award must begin anew after a break in service. Service while attending Officer Candidate School or Warrant Officer Candidate school will be considered enlisted service, and termination will occur when the soldier is commissioned or appointed a warrant officer.

(ii) Although only unit service may be credited for award of this medal, consecutive Ready Reserve service between periods of unit service will not be considered as a break in service and service in the first unit may be added to service in the second unit to determine total qualifying service.

(iii) Soldiers who are ordered to active duty in the AGR program will be awarded the ARCAM if they have completed 2 of the 3 years required (Army Good Conduct Medal eligibility starts on the effective date of the AGR order). Soldiers with less than 2 years will not receive an award. Service lost may be recovered if the soldier is separated honorably from the AGR program and reverts to troop program unit service, for example, a soldier serves 1 year and 6 months of qualifying service and is ordered to an AGR tour. This service is not sufficient for award of the ARCAM. When the soldier leaves the AGR program that 1 year and 6 months is granted towards the next award of the ARCAM. Only the State adjutant general may determine that the AGR service was not sufficiently honorable enough to revoke the previously earned time, regardless of the type of separation given.

(iv) The member must have exhibited honest and faithful service as is in accordance with the standards of conduct, courage and duty required by law and customs of the service, of a member of the same grade as the individual to whom the standard is being applied.

(4) A member must be recommended for the award by his or her unit commander whose recommendation is based on personal knowledge of the individual and the individual's official records of periods of service under prior commanders during the period for which the award is made.

(5) A commander may not delay award or extend the qualifying period for misconduct. A determination that service is not honorable as prescribed negates the entire period of the award.

(f) *Unqualified service.* (1) Service performed in the Reserve Components of the U.S. Air Force, Navy, Marine Corps, or Coast Guard may not be credited for award of the ARCAM.

(2) Release from Army Reserve Component status for entry into service as a cadet or midshipman at any U.S. service academy or discharge from Army Reserve Component for immediate entry in the Regular Army, in an officer or enlisted status, is considered termination of service for the purpose of qualifying for the ARCAM.

(3) Service while in an enlisted AGR status may not be credited for award of the ARCAM.

(g) *Subsequent awards and Oak Leaf Clusters.* Second and succeeding awards of the ARCAM are denoted by Oak Leaf Clusters.

(h) *Description.* The medal is Bronze, 1¼ inches in diameter, consisting of a faceted twelve-pointed star with a beveled edge, the points surmounting a wreath of laurel and bearing on a disc within a smaller wreath of laurel, a torch between two swords crossed saltirewise, points up and flanked by two mullets. The reverse has the cuirass from the DA seal centered below ''ARMY NATIONAL GUARD'' or ''UNITED STATES ARMY RESERVE'' and above ''FOR ACHIEVEMENT''. The ribbon is 1⅜ inches wide ribbon consisting of the following stripes: 5/16 inch Old Gold 67105; ⅛ inch Ultramarine Blue 67118; 1/16 inch White 67101; center ⅜ inch Scarlet 67111; 1/16 inch White; ⅛ inch Ultramarine Blue; and 5/16 inch Old Gold.

§ 578.39 Army Reserve Components Overseas Training Ribbon.

(a) *Criteria.* The Army Reserve Components Overseas Training Ribbon (ARCOTR) was established by the Secretary of the Army on July 11, 1984. It is awarded to members of the Reserve Components of the Army, (Army National Guard and U.S. Army Reserve), for successful completion of annual training (AT) or active duty for training (ADT) for a period not less than 10 consecutive duty days on foreign soil. ARNG and USAR soldiers who accompany the Reserve Component (RC) unit (including unit cells) to which they are assigned or attached as full-time unit support (FTUS) during overseas training are also eligible for the award.

(b) Effective July 11, 1984, all members of the ARNG and USAR are eligible for this award if they were active Reserve status members of the Army National Guard, U.S. Army Reserve (not on active duty in the Active Army), or AGR FTUS soldiers at the time their unit underwent AT or ADT on foreign soil.

(c) AGR personnel, not assigned to a TPU, are also eligible for award of the ARCOTR provided they are ordered overseas specifically as advance party to, simultaneously with, or in support of mop-up operations of RC units training overseas. Ten consecutive days overseas must be met. Other AGR members overseas for any other reason are not eligible for the ARCOTR.

(d) The ARCOTR may be awarded retroactively to those personnel who successfully completed AT or ADT on foreign soil in a Reserve status prior to July 11, 1984 provided they have an active status as defined above on or after July 11, 1984.

(e) Soldiers must be credited with completion of at least 10 consecutive duty days outside the 50 States, the District of Columbia and U.S. possessions and territories in the performance of duties in conjunction with Active Army, joint services, or Allied Forces. The day of departure counts; the day of return does not.

(f) The ARCOTR is a training ribbon, which does not conflict with service medals or decorations.

(g) Numerals will be used to denote second and subsequent awards of the ARCOTR. (See § 578.61 Appurtenances to military decorations)

(h) *Description.* The ribbon is 1⅜ inches in width; however, it is mounted on the ribbon bar horizontally so that the horizontal center stripe is 3/32 inch Old Glory Red with a 3/64 inch White stripe on each side. The remainder of the ribbon is Ultramarine Blue.

§ 578.40 Overseas Service Ribbon.

(a) *Criteria.* The Overseas Service Ribbon (OSR) was established by the Secretary of the Army on April 10, 1981. It is awarded to members of the U.S. Army for successful completion of overseas tours.

(b) Effective August 1, 1981, all members of the Active Army, Army National Guard and Army Reserve in an active Reserve status are eligible for this award. The ribbon may be awarded retroactively to those personnel who were credited with a normal overseas tour completion before August 1, 1981 provided they had an Active Army

status as defined above on or after August 1, 1981.

(c) Soldiers must be credited with a normal overseas tour completion according to AR 614–30. Service member who had overseas service with another branch of service (U.S. Navy, Air Force, or Marine Corps) must be credited with a normal overseas tour completion by that service to qualify for award of the Army OSR.

(d) Numerals will be used to denote second and subsequent awards of the OSR.

(e) *Posthumous award of the OSR.* For first award of the OSR only, an individual may be posthumously awarded (on or after August 1, 1981) the OSR before completion of the overseas tour, provided the soldier's death is ruled ''Line of duty-Yes.''

(f) *Description.* The Army Overseas Service ribbon is 1⅜ inches in with. It is composed of the following vertical stripes: 3/16 inch National Flag Blue 67124, 5/16 inch Grotto Blue 67165, 1/16 inch Golden Yellow 67104, ¼ inch Brick Red 67113, 1/16 inch Golden Yellow, 5/16 inch Grotto Blue, and 3/16 inch National Flag Blue.

§ 578.41 Army Service Ribbon.

(a) *Criteria.* The Army Service Ribbon (ASR) was established by the Secretary of the Army on April 10, 1981. It is awarded to members of the U.S. Army for successful completion of initial entry training.

(b) Effective August 1, 1981, all members of the Active Army, Army National Guard, and U.S. Army Reserve in an active Reserve status are eligible for this award. The ribbon may be awarded retroactively to those personnel who completed the required training before August 1, 1981 provided they had an Active Army status as defined above on or after August 1, 1981.

(c) Officers will be awarded this ribbon upon successful completion of their basic/orientation or higher level course. For those officer personnel assigned a specialty, special skill identifier, or MOS based on civilian or other service acquired skills, this ribbon will be awarded upon honorable completion of 4 months active service.

(d) Enlisted soldiers will be awarded this ribbon upon successful completion of their initial MOS producing course. For those enlisted soldiers assigned a MOS based on civilian or other service acquired skills, this ribbon will be awarded on honorable completion of 4 months active service.

(e) Only one award of the ASR is authorized, regardless of whether a soldier completes both officer and enlisted initial entry training.

(f) For first award only, an individual may be posthumously awarded (on or after August 1, 1981) the Army Service Ribbon prior to completion of the requisite training or time in service, provided the soldier's death is ruled ''Line of duty-Yes.''

(g) Description. The ribbon is 1⅜ inches in width. It is composed of the following vertical stripes: 7/32 inch Scarlet 67111, 5/32 Orange 67110, 3/32 inch Golden Yellow 67104, ⅛ inch Emerald 67128, Ultramarine Blue 67118, ⅛ inch Emerald, 3/32 inch Golden Yellow, 5/32 inch Orange, and 7/32 inch Scarlet.

§ 578.42 Noncommissioned Officer Professional Development Ribbon.

(a) *Criteria.* The Noncommissioned Officer (NCO) Professional Development Ribbon (NPDR) was established by the Secretary of the Army on April 10, 1981. It is awarded to members of Active Army, ARNG, and USAR soldiers for successful completion of designated NCO professional development courses.

(b) *Subsequent awards.* The NPDR consist of the basic ribbon with numeral devices of 2, 3, or 4, which signify satisfactory completion of the respective levels of NCO professional development courses. Numerals used in conjunction with this service ribbon are the same type as those used for subsequent awards of the Air Medal.

(c) *Policy.* (1) A change approved in February 1989 completely revamped the wear policy of numerals on ribbons and award suspension elements. Also, simultaneously U.S. Army Training and Doctrine Command (TRADOC) announced that the First Sergeant Course is not a recognized element of the NCO Professional Development Training System. Because of the impact of these two far-reaching policy changes, no grandfathering is allowed for Active Army or RC soldiers concerning the wear of numerals on the NPDR. Only the numerals 2, 3, and 4 are authorized for wear on the ribbon.

(2) Once a service member has been awarded the NPDR upon graduation from Primary Leadership Development Course (PLDC) or Primary Leadership Development Course-RC, subsequent appropriate numerals will be awarded to identify completion of higher level NCO Education System (NCOES) or RC NCOES courses.

(3) Senior NCOs selected by the U.S. Army Sergeants Major Academy (USASMA) who complete equivalent resident courses conducted by the other Services will wear the NPDR with numeral 4.

(4) Soldiers who have been authorized by their local commanders to attend local NCO courses or training conducted by the other Services and who qualify for or are awarded another Service's training ribbon will not wear the other Service's ribbons on the Army uniform.

(5) Soldiers who have attended NCO development courses, other than Senior Level, conducted by another Service while in the Army will not be granted Army course equivalency recognition.

(6) Soldiers must successfully complete one or more of the courses listed in paragraph (d) of this section which are further described in AR 351–1. Graduates of NCO Academy courses conducted prior to 1976 for the Active Army, and 1980 for Reserve Components, will be given credit for the Primary Level only.

(7) Acceptable evidence of graduation is a diploma, certificate, or a letter signed by an appropriate service school official.

(8) Effective March 30, 1989, a service member will be awarded the NPDR with the numeral which identifies the highest level of NCOES or RC–NCOES successfully completed as follows—Bar Ribbon Device=Primary Level; 2=Basic Level; 3=Advanced Level; and 4=Senior Level.

(d) *Requirements.* Effective August 1, 1981, all Active Army, Army National Guard and Army Reserve soldiers in an active status are eligible for this award for satisfactory completion of the respective NCOES or RC–NCOES courses as follows:

(1) Primary level—Primary NCO Course, Combat Arms (PNCOC), Primary Leadership Course (PLC), Primary Technical Courses (Service School—PTC), and Primary Leadership Development Course (PLDC) for award of the basic ribbon.

(2) Basic level—Basic NCO Course, Combat Arms (BNCOC), Basic Technical Courses (Service School—BTC), and Basic NCO Course (CS/CSS–BNCOC) for award of numeral 2.

(3) Advanced level—Advanced NCO Courses (Service School—ANCOC) for award of numeral 3.

(4) Senior level—U.S. Army Sergeants Major Academy (USASMA) for award of numeral 4. (See paragraph (c)(3) of this section).

(e) *Special instructions.* Special instructions for ARNG and USAR are as follows:

(1) Primary Level—Primary NCO Course, Combat Arms-Reserve Components (PNCOC–RC), and effective October 1, 1985 Primary Leadership Development Course-Reserve Components (PLDC–RC).

(2) Basic Level—Basic NCO Course-Reserve Components (CS/CSS BNCOC–RC) through September 30, 1985 (PNCOC–RC and BNCOC–RC combined for CA/CS/CSS). Effective October 1, 1987 Basic NCO Course/Reserve Components (CA, CS, CSS) as developed and implemented.

(f) *Description.* The ribbon is 1⅜ inches in width. It is composed of the following vertical stripes: 3/16 inch Green 67129, ⅛ inch Yellow 67108, 3/16 inch Green, 1/16 inch Yellow; ¼ inch Flag Blue 67124, 1/16 inch Yellow, 3/16 inch Green, ⅛ inch Yellow, and 3/16 inch Green.

§ 578.43 Armed Forces Reserve Medal.

(a) *Criteria.* The Armed Forces Reserve Medal (AFRM) was established by Executive Order 10163, as announced in DA Bulletin 15, 1950, and was amended by Executive Order 10439, announced in DA Bulletin 3, 1953 and Executive Order 13013, dated August 6, 1996.

(b) The reverse side of this medal is struck in two designs for award to personnel whose Reserve Component service has been primarily in the organized Reserve or primarily in the National Guard. The first design portrays the Minute Man from the Organized Reserve Crest; the other design portrays the National Guard insignia.

(c) The AFRM is awarded for honorable and satisfactory service as a member or former member of one or more of the Reserve Components of the Armed Forces of the United States, including the Coast Guard Reserve and the Marine Corps Reserve, for a period of 10 years under the following conditions:

(1) Such years of service must have been performed within a period of 12 consecutive years.

(2) Each year of active or inactive status honorable service prior to July 1, 1949 in any Reserve Component listed in AR 135–180, will be credited toward award. For service performed on or after July 1, 1949, a member must accumulate, during each anniversary year, a minimum of 50 retirement points as prescribed in AR 135–180.

(3) Service in a regular component of the Armed Forces, including the Coast Guard, is excluded except that service in a Reserve Component which is concurrent in whole or in part with service in a regular component will be included. (Example: regular component enlisted soldier with a Reserve commission.)

(4) Any period during which Reserve service is interrupted by one or more of the following will be excluded in computing, but will not be considered as a break in the period of 12 years:

(i) Service in a regular component of the Armed Forces.

(ii) During tenure of office by a State official chosen by the voters of the entire State, territory, or possession.

(iii) During tenure of office of member of the legislative body of the United States or of any State, territory, or possession.

(iv) While service as judge of a court of record of the United States, or of any State, territory, possession, or the District of Columbia.

(5) *Members called to active duty.* On or after August 1, 1990, the member was called to active duty and served under 10 U.S.C. 12301(a), 12302, 12304, 12406, or, in the case of the U.S. Coast Guard Reserve, 14 U.S.C. 712. The member volunteered and served on active duty in support of specific U.S. military operations or contingencies designated by the Secretary of Defense, as defined in of 10 U.S.C. 101(A) (13). AGR members who receive orders changing their current duty status (legal authority under which they perform duty), their duty location, or assignment to support a contingency operation are eligible for the award of the ''M'' Device.

(d) The Ten-year-device is authorized for wear on the AFRM to denote each succeeding 10-year period as follows:

(1) A bronze hourglass shall be awarded upon completion of the first 10-year period award.

(2) A silver hourglass shall be awarded upon completion of the second 10-year period award.

(3) A gold hourglass shall be awarded upon completion of the third 10-year period award.

(4) A gold hourglass, followed by a bronze hourglass shall be awarded upon completion of the fourth 10-year period award.

(e) *''M'' Device.* The ''M'' Device is authorized for wear on the AFRM by members of the Reserve Components who are called or who volunteer and serve or active duty in support of specific U.S. military operations or contingencies designed by the Secretary of Defense, as defined in of 10 U.S.C. 101(A)(13).

(1) When a member qualifies for the ''M'' Device, the Bronze ''M'' shall be awarded, positioned on the ribbon and medal, and a number shall be included on the ribbon and medal. No more than one AFRM may be awarded to any one person. Multiple periods of service during one designated contingency (under provisions of § 578.41(c) shall count as one ''M'' Device award.

(2) If no ''M'' Device is authorized, the appropriate hourglass shall be positioned in the center of the ribbon. If no hourglass is authorized, the ''M'' Device shall be positioned in the center of the ribbon, followed by Arabic numerals indicating the number of times the device has been awarded, starting with the second award, no number is worn for the first award.

(3) If both the hourglass and the ''M'' Device are awarded, the hourglass shall be positioned in first position on the ribbon (at the wearer's right), the ''M'' Device in the middle position, and the number of times the ''M'' Device has been awarded in the remaining position (at the wearer's left).

(f) *Description.* The medal is Bronze, 1¼ inches in diameter, with a flaming torch in front of a crossed powder horn and a bugle within a circle composed of thirteen stars and thirteen rays. On the reverse is a different design for each of the reserve components. The reverse of all medals have the inscription ''ARMED FORCES RESERVE'' around the rim. Organized Reserve: On a wreath, the Lexington Minuteman statue as it stands on the Common in Lexington, Massachusetts encircled by thirteen stars. National Guard: The National Guard insignia (two crossed fasces superimposed on an eagle displayed with wings reversed. Air Force Reserve: The crest from the Air Forces seal (on a wreath, an eagle displayed in front of a cloud form). Naval Reserve: The center device of the Department of the Navy seal (an eagle displayed on an anchor in front of a ship in full sail). Marine Corps Reserve: The Marine Corps insignia (eagle perched on a globe superimposed on an anchor). Coast Guard Reserve: The central design of the Coast Guard seal (crossed anchors superimposed by a shield within an annulet).

(1) The devices are Bronze hourglass to indicate 10 years service; silver hourglass to indicate 20 years service; gold hourglass to indicate 30 years service; letter ''M'' to indicate mobilization in support of U.S. Military operations or contingencies designated by the Secretary of Defense; and a numeral to indicate number of times mobilized.

(2) The ribbon is 1⅜ inches wide and consists of the following stripes: 1/16 inch Bluebird 67117; 1/32 inch Chamois 67142; 1/16 inch Bluebird; 1/32 inch Chamois; 1/16 inch Bluebird; ⅜ inch Chamois; center ⅛ inch Bluebird; ⅜ inch Chamois; 1/16 inch Bluebird; 1/32 inch Chamois; 1/16 inch Bluebird; 1/32 inch Chamois; and 1/16 inch Bluebird.

§ 578.44 Korean Service Medal.

(a) *Criteria.* The Korean Service Medal (KSM) was established by Executive

Order 10179, dated November 8, 1950. It is awarded for service between June 27, 1950 and July 27, 1954, under any of the following conditions:

(1) Within the territorial limits of Korea or in waters immediately adjacent thereto.

(2) With a unit under the operational control of the Commander in Chief, Far East, other than one within the territorial limits of Korea, which has been designated by the Commander in Chief, Far East, as having directly supported the military efforts in Korea.

(3) Was furnished an individual certificate by the Commander in Chief, Far East, testifying to material contribution made in direct support of the military efforts in Korea.

(b) The service prescribed must have been performed under any of the following conditions:

(1) On permanent assignment.

(2) On temporary duty for 30 consecutive days or 60 nonconsecutive days.

(3) In active combat against the enemy under conditions other than those prescribed in paragraphs (a)(1) and (2) of this section, provided a combat decoration has been awarded or an individual certificate has been furnished by the commander of an independent force or of a division, ship, or air group, or comparable or higher unit, testifying to such combat credit.

(c) One bronze service star is authorized for each campaign under the following conditions:

(1) Assigned or attached to and present for duty with a unit during the period in which it participated in combat.

(2) Under orders in the combat zone and in addition meets any of the following requirements:

(i) Awarded a combat decoration.

(ii) Furnished a certificate by a commanding general of a corps, higher unit, or independent force that he actually participated in combat.

(iii) Served at a normal post of duty (as contrasted to occupying the status of an inspector, observer, or visitor).

(iv) Aboard a vessel other than in a passenger status and furnished a certificate by the home port commander of the vessel that he served in the combat zone.

(3) Was an evader or escapee in the combat zone or recovered from a prisoner-of-war status in the combat zone during the time limitations of the campaign. Prisoners of war will not be accorded credit for the time spent in confinement or while otherwise in restraint under enemy control. (§ 578.61 Appurtenances to military decorations)

(d) The arrowhead device is authorized for wear on the KSM to denote participation in a combat parachute jump, helicopter assault landing, combat glider landing, or amphibious assault landing, while assigned or attached as a member of an organized force carrying out an assigned tactical mission. Additional information on the arrowhead device is in § 578.61.

(e) *Description.* The medal is Bronze, 1¼ inches in diameter, a Korean gateway, encircled by the inscription ''KOREAN SERVICE''. On the reverse is the Korean symbol taken from the center of the Korean National flag with the inscription ''UNITED STATES OF AMERICA'' and a spray of oak and laurel encircling the design. The ribbon is 1⅜ inches wide and consisting of the following stripes: 1/32 inch White 67101; 19/32 inch Bluebird 67117; center ⅛ inch White; 19/32 inch Bluebird; and 1/32 inch White.

§ 578.45 Medal of Humane Action.

(a) *Criteria.* The Medal of Humane Action was established by the act of Congress July 20, 1949 (63 Stat. 477). It is awarded to members of the Armed Forces of the United States and to other persons when recommended for meritorious participation, for service while participating in the Berlin airlift or in direct support thereof.

(b) Service must have been for at least 120 days during the period June 26, 1948 and September 30, 1949, inclusive, with the following prescribed boundaries of area of Berlin airlift operations:

(1) Northern boundary. 54th parallel north latitude;

(2) Eastern boundary. 14th meridian east longitude;

(3) Southern boundary. 48th parallel north latitude;

(4) Western boundary. 5th meridian west longitude.

(c) Posthumous award may be made to any person who lost his life while, or as a direct result of, participating in the Berlin airlift, without regard to the length of such service, if otherwise eligible.

(d) See DA Pamphlet 672–1 for the list of Army units entitled to the Berlin Airlift Device.

(e) *Description.* The medal is Bronze is 1¼ inches in diameter. The miniature medal is ⅝ inch in diameter. On the obverse, in the center, a C–54 airplane (as viewed from above) within a wreath of wheat connected at the bottom by a coat of arms. On the reverse, an eagle, shield and arrows from the seal of the DOD, beneath the words ''FOR HUMANE ACTION'' and above the inscription in four lines, ''TO SUPPLY NECESSITIES OF LIFE TO THE PEOPLE OF BERLIN GERMANY''. The ribbon to the Medal for Humane Action is 1⅜ inches in width and consists of the following stripes: 9/32 inch black; 1/16 inch white; 9/32 inch teal blue; 3/64 inch white; 1/32 inch scarlet; 3/64 inch white; 9/32 inch teal blue; 1/16 inch white; and 9/32 inch black.

§ 578.46 Army of Occupation Medal.

(a) *Criteria.* The Army of Occupation Medal (AOM) was established by War Department General Orders (WDGO) 32, 1946. It is awarded for service for 30 consecutive days at a normal post of duty (as contrasted to inspector, visitor, courier, escort, passenger, temporary duty, or detached service) while assigned to any of the following:

(1) Army of Occupation of Germany (exclusive of Berlin) between May 9, 1945 and May 5, 1955. (Service between May 9 and November 8, 1945 will be counted only if the European-African-Middle Eastern Campaign Medal was awarded for service before May 9, 1945.)

(2) Service for the prescribed period with a unit which has been designated in DA general orders as having met the requirement for the Berlin airlift device.

(3) Service for which the individual was awarded the Berlin airlift device in orders issued by appropriate field authority.

(4) Army of Occupation of Austria between May 9, 1945 and July 27, 1955. (Service between May 9 and November 8, 1945 will be counted only if the European-African-Middle Eastern Campaign Medal was awarded for service before May 9, 1945.)

(5) Army of Occupation of Berlin between May 9, 1945 and October 2, 1990. (Service between May 9 and November 8, 1945 will be counted only if the European-African-Middle Eastern Campaign Medal was awarded for service before May 9, 1945.)

(6) Army of Occupation Italy between May 9, 1945 and September 15, 1947 in the compartment of Venezia Giulia E. Zara or Province of Udine, or with a unit in Italy as designated in DAGO 4, 1947. (Service between May 9 and November 8, 1945 will be counted only if the European-African-Middle Eastern Campaign Medal was awarded for service before May 9, 1945.)

(7) Army of Occupation of Japan between September 3, 1945 and April 27, 1952 in the four main islands of Hokkaido, Honshu, Shikoku, and Kyushu, the surrounding smaller islands of the Japanese homeland, the Ryukyu Islands, and the Bonin-Volcano Islands. (Service between September 3, 1945 and March 2, 1946 will be counted only if the Asiatic-Pacific Campaign Medal was awarded for service before September 3, 1945. In addition, service

which meets the requirements for the KSM as prescribed in § 578.44 will not be counted in determining eligibility for this medal.)

(8) Army of Occupation of Korea between September 3, 1945 and June 29, 1949, inclusive. (Service between September 3, 1945 and March 2, 1946 will be counted only if the Asiatic-Pacific Campaign Medal was awarded for service before September 3, 1945.)

(b) Clasps and the Berlin airlift device are authorized for wear on the Army of Occupation Medal. They are as follows:

(1) *Army of Occupation Medal Clasp.* Soldiers who served in the European Theater during the occupation of Europe will wear the clasp inscribed ''Germany.'' Soldiers who served in the Far East Theater during the occupation of the Far East will wear the Clasp inscribed ''Japan.'' Clasps bearing other inscriptions are not authorized. (The Army of Occupation Medal Clasp is described in § 578.61).

(2) *Berlin Airlift Device.* This device is awarded for service of 92 consecutive days with a unit credited with participation in the Berlin airlift, or by competent field authority on an individual basis. Qualifying service must have been entirely within the period from June 26, 1948 to September 30, 1949, inclusive. Orders announcing award of the Berlin Airlift device will specifically award the Army of Occupation Medal to persons not otherwise eligible therefor.

(c) *Description.* The medal is Bronze, 1¼ inches in width. On the obverse, the Remagen Bridge abutments below the words ''ARMY OF OCCUPATION''. On the reverse, Fujiyama with a low hanging cloud over two Japanese junks above a wave scroll and the date ''1945''. A Bronze clasp ⅛ inch wide and 1½ inches in length with the word ''GERMANY'' or ''JAPAN'' is worn on the suspension ribbon to indicate service in Europe or the Far East. NAVY: On the obverse is Neptune mounted on a composite creature of a charging horse and a sea serpent with a trident grasped in right hand above wave scrolls. Around the bottom of the medal are the words ''OCCUPATION SERVICE''. The reverse is the same as the China Service Medal and is an eagle perched on the shank of a horizontal anchor with a branch of laurel entwined around the anchor. On the left is the word ''FOR'' and to the right is the word ''SERVICE'' and around the top is the inscription ''UNITED STATES NAVY''. MARINE CORPS: The medal for the Marine Corps is the same as the Navy, except the inscription around the top of the reverse is ''UNITED STATES MARINE CORPS''. The ribbon is the same for both medals and is 1⅜ inches wide and consists of the following stripes: 3/16 inch White 67101; ½ inch Black 67138; ½ inch Scarlet 67111; and 3/16 inch White.

§ 578.47 World War II Victory Medal.

(a) *Criteria.* The World War II Victory Medal was established by the act of Congress July 6, 1945 (59 Stat. 461). It is awarded for service between December 7, 1941 and December 31, 1946, both dates inclusive.

(b) *Description.* The medal is Bronze, 1⅜ inches in width. On the obverse is a figure of Liberation standing full length with head turned to dexter looking to the dawn of a new day, right foot resting on a war god's helmet with the hilt of a broken sword in the right hand and the broken blade in the left hand, the inscription ''WORLD WAR II'' placed immediately below the center. On the reverse are the inscriptions ''FREEDOM FROM FEAR AND WANT'' and ''FREEDOM OF SPEECH AND RELIGION'' separated by a palm branch, all within a circle composed of the words ''UNITED STATES OF AMERICA 1914 1945''. The ribbon is 1⅜ inches wide and consists of the following stripes: ⅜ inch double rainbow in juxtaposition (blues, greens, yellows, reds (center), yellows greens and blues); 1/32 inch White 67101; center 9/16 inch Old Glory Red 67156; 1/32 inch White; and ⅜ inch double rainbow in juxtaposition. The rainbow on each side of the ribbon is a miniature of the pattern used in the WWI Victory Medal.

§ 578.48 European-African-Middle Eastern Campaign Medal.

(a) *Criteria.* The European-African-Middle Eastern Campaign Medal was established by Executive Order 9265, announced in WD Bulletin 56, 1942, as amended by Executive Order 9706, March 15, 1947. It is awarded for service within the European-African-Middle Eastern Theater between December 7, 1941 and November 8, 1945 under any of the conditions as prescribed in § 578.49 (Asiatic-Pacific Campaign Medal).

(b) The boundaries of European-African-Middle Eastern Theater are as follows:

(1) *Eastern boundary.* The eastern boundary is coincident with the western boundary of the Asiatic-Pacific Theater (§ 578.49).

(2) *Western boundary.* The western boundary is coincident with the eastern boundary of the American Theater (§ 578.50 American Campaign Medal).

(c) One bronze service star is authorized for each campaign under the following conditions: (1) Assigned or attached to, and present for duty with, a unit during the period in which it participated in combat.

(2) Under orders in the combat zone and in addition meets any of the following requirements:

(i) Awarded a combat decoration.

(ii) Furnished a certificate by a commanding general of a corps or higher unit or independent force that he actually participated in combat.

(iii) Served at a normal post of duty (as contrasted to occupying the status of an inspector, observer, or visitor).

(iv) Aboard a vessel other than in a passenger status and furnished a certificate by the home port commander of the vessel that he served in the combat zone.

(3) Was an evadee or escapee in the combat zone or recovered from a prisoner-of-war status in the combat zone during the time limitations of the campaign. Prisoners of war will not be accorded credit for the time spent in confinement or while otherwise in restraint under enemy control.

(d) The arrowhead is authorized for wear on this medal to denote participation in a combat parachute jump, helicopter assault landing, combat glider landing, or amphibious assault landing, while assigned or attached as a member of an organized force carrying out an assigned tactical mission. (The arrowhead is described in § 578.61)

(e) *Description.* The Bronze medal is 1¼ inches in width. On the obverse is a LST landing craft and troops landing under fire with an airplane in the background below the words ''EUROPEAN AFRICAN MIDDLE EASTERN CAMPAIGN''. On the reverse, an American bald eagle close between the dates ''1941–1945'' and the words ''UNITED STATES OF AMERICA''. The ribbon is 1⅜ inches wide and consists of the following stripes: 3/16 inch Brown 67136; 1/16 inch Irish Green 67189; 1/16 inch White 67101; 1/16 inch Scarlet 67111; ¼ inch Irish Green; center ⅛ inch triparted Old Glory Blue 67178, White and Scarlet; ¼ inch Irish Green; 1/16 inch White; 1/16 inch Black 67138; 1/16 inch White; and 3/16 inch Brown.

§ 578.49 Asiatic-Pacific Campaign Medal.

(a) *Criteria.* The Asiatic-Pacific Campaign Medal was established by Executive Order 9265 (WD Bulletin 56, November 6, 1942), as amended by Executive Order 9706, March 15, 1947. It is awarded for service with the Asiatic-Pacific Theater between December 7, 1941 and March 2, 1946 under any of the following conditions:

(1) On permanent assignment in the Asiatic-Pacific Theater.

(2) In a passenger status or on temporary duty for 30 consecutive days or 60 nonconsecutive days.

(3) In active combat against the enemy and was awarded a combat decoration or furnished a certificate by the commanding general of a corps or higher unit or independent force showing that he actually participated in combat.

(b) *Boundaries of Asiatic-Pacific Theater.*— (1) *Eastern boundary.*— Coincident with the western boundary of the American Theater (§ 578.50 American Campaign Medal).

(2) *Western boundary.* From the North Pole south along the 60th meridian east longitude to its intersection with the east boundary of Iran, thence south along the Iran boundary to the Gulf of Oman and the intersection of the 60th meridian east longitude, thence south along the 60th meridian east longitude to the South Pole.

(c) One bronze service star is authorized for each campaign under the conditions outlined in § 578.48 European-African-Middle Eastern Campaign Medal. (Service stars are described in § 578.61).

(d) The arrowhead is authorized for wear on this medal to denote participation in a combat parachute jump, helicopter assault landing, combat glider landing, or amphibious assault landing, while assigned or attached as a member of an organized force carrying out an assigned tactical mission. (The arrowhead is described in § 578.61).

(e) *Description.* The Bronze medal is 1¼ inches in width. On the obverse is a tropical landing scene with a battleship, aircraft carrier, submarine and an aircraft in the background with landing troops and palm trees in the foreground with the words ''ASIATIC PACIFIC CAMPAIGN'' above the scene. On the reverse, an American bald eagle close between the dates ''1941–1945'' and the words ''UNITED STATES OF AMERICA''. The ribbon is 1⅜ inches wide and consists of the following stripes: 3/16 inch Yellow 67108; 1/16 inch White 67101; 1/16 inch Scarlet 67111; 1/16 inch White; ¼ inch Yellow; center ⅛ triparted Old Glory Blue 67178, White and Scarlet; ¼ inch Yellow; 1/16 inch White; 1/16 inch Scarlet; 1/16 inch White; and 3/16 inch Yellow.

§ 578.50 American Campaign Medal.

(a) *Criteria.* The American Campaign Medal was established by Executive Order 9265 (WD Bulletin. 56, 1942), as amended by Executive Order 9706, March 15, 1947. It is awarded for service within the American Theater between December 7, 1941 and March 2, 1946 under any of the following conditions:

(1) On permanent assignment outside the continental limits of the United States.

(2) Permanently assigned as a member of a crew of a vessel sailing ocean waters for a period of 30 consecutive days or 60 nonconsecutive days.

(3) Outside the continental limits of the United States in a passenger status or on temporary duty for 30 consecutive days or 60 nonconsecutive days.

(4) In active combat against the enemy and was awarded a combat decoration or furnished a certificate by the commanding general of a corps, higher unit, or independent force that the soldier actually participated in combat.

(5) Within the continental limits of the United States for an aggregate period of 1 year.

(b) The boundaries of American Theater are as follows:

(1) *Eastern boundary.* The eastern boundary is located from the North Pole, south along the 75th meridian west longitude to the 77th parallel north latitude, thence southeast through Davis Strait to the intersection of the 40th parallel north latitude and the 35th meridian west longitude, thence south along the meridian to the 10th parallel north latitude, thence southeast to the intersection of the Equator and the 20th meridian west longitude, thence south along the 20th meridian west longitude to the South Pole.

(2) *Western boundary.* The western boundary is located from the North Pole, south along the 141st meridian west longitude to the east boundary of Alaska, thence south and southeast along the Alaska boundary to the Pacific Ocean, thence south along the 130th meridian to its intersection with the 30th parallel north latitude, thence southeast to the intersection of the Equator and the 100th meridian west longitude, thence south to the South Pole.

(c) One bronze service star is authorized for wear on the American Campaign Medal to denote participation in the antisubmarine campaign. The individual must have been assigned or attached to, and present for duty with, a unit credited with the campaign. Information on the antisubmarine campaign.

(d) *Description.* The Bronze medal is 1¼ inches in width. On the obverse is a Navy cruiser under full steam with a B–24 airplane flying overhead with a sinking enemy submarine in the foreground on three wave symbols, in the background a few buildings representing the arsenal of democracy, above the scene the words ''AMERICAN CAMPAIGN''. On the reverse an American bald eagle close between the dates ''1941–1945'' and the words ''UNITED STATES OF AMERICA''. The ribbon is 1⅜ inches wide and consists of the following stripes: 3/16 inch Oriental Blue 67172; 1/16 inch White 67101; 1/16 inch Black 67138; 1/16 inch Scarlet 67111; 1/16 inch White; 3/16 inch Oriental Blue; center ⅛ triparted Old Glory Blue 67178, White and Scarlet; 3/16 inch Oriental Blue; 1/16 inch White; 1/16 inch Scarlet; 1/16 inch Black; 1/16 inch White; and 3/16 inch Oriental Blue.

§ 578.51 Women's Army Corps Service Medal.

(a) *Criteria.* The Women's Army Corps Service Medal was established by Executive Order 9365, announced in WD Bulletin 17, 1943. It is awarded for service in both the Women's Army Auxiliary Corps between July 10, 1942 and August 31, 1943 and the Women's Army Corps between September 1, 1943 and September 2, 1945.

(b) *Description.* A Bronze medal, 1¼ inches in diameter, with the head of Pallas Athene in profile facing right, superimposed on a sheathed sword cross with oak leaves and a palm branch within a circle composed of the words ''WOMEN'S'' in the upper half, and in the lower half ''ARMY CORPS''. On the reverse, within an arrangement of 13 stars, is a scroll bearing the words ''FOR SERVICE IN THE WOMEN'S ARMY AUXILIARY CORPS'' in front of the letters ''U S'' in lower relief. At the top and perched on the scroll is an eagle with wings elevated and displayed and at the bottom, the date ''1942–1943''. The ribbon is 1⅜ inches wide and consists of the following stripes: ⅛ inch Old Gold 67105; 1⅛ inch Mosstone Green 67127; and ⅛ inch Old Gold.

§ 578.52 American Defense Service Medal.

(a) The American Defense Service Medal (ADSM) was established by Executive Order 8808, announced in WD Bulletin 17, 1941. It is awarded for service between September 8, 1939 and December 7, 1941 under orders to active duty for a period of 12 months or longer.

(b) A clasp, with the inscription ''Foreign Service'', is worn on the ADSM to denote service outside the continental limits of the United States, including service in Alaska, as a member of a crew of a vessel sailing ocean waters, flights over ocean waters, or as an assigned member of an organization stationed outside the continental limits of the United States. Possession of a clasp is denoted by the wearing of a bronze service star on the service ribbon. (See § 578.61 for

descriptions of the clasp and service stars.)

(c) *Description.* The Bronze medal is 1¼ inches in width. On the obverse is a female Grecian figure symbolic of defense, holding in her sinister hand an ancient war shield in reverse and her dexter hand brandishing a sword above her head, and standing upon a conventionalized oak branch with four leaves. Around the top is the lettering ''AMERICAN DEFENSE''. On the reverse is the wording ''FOR SERVICE DURING THE LIMITED EMERGENCY PROCLAIMED BY THE PRESIDENT ON SEPTEMBER 8,1939 OR DURING THE UNLIMITED EMERGENCY PROCLAIMED BY THE PRESIDENT ON MAY 27, 1941'' above a seven-leafed spray of laurel. The foreign service clasp is a Bronze bar ⅛ inch in width and 1½ inches in length with the words ''FOREIGN SERVICE'', with a star at each end of the inscription. The foreign service clasp is placed on the suspension ribbon of the medal. The ribbon is 1⅜ inches wide and consists of the following stripes: 3/16 inch Golden Yellow 67104; ⅛ inch triparted Old Glory Blue 67178; White 67101; and Scarlet 67111; center ¾ inch Golden Yellow; ⅛ inch triparted Scarlet; White; and Old Glory Blue 67178; and 3/16 inch Golden yellow.

§ 578.53 Army of Occupation of Germany Medal.

(a) *Criteria.* The Army of Occupation of Germany Medal was established by the act of November 21, 1941, (55 Stat. 781). It is awarded for service in Germany or Austria-Hungary between November 12, 1918 and July 11, 1923.

(b) *Description.* The medal is Bronze and 1¼ inches in diameter. On the obverse is a profile of General John J. Pershing, encircled by four stars indicating his insignia of grade as Commanding General of the Field Forces. In the lower left is the inscription ''GENERAL JOHN J. PERSHING'' and on the right is a laurel wreath superimposed by a sword with the dates ''1918'' and ''1923'' enclosed by the wreath. The reverse shows the American eagle perched with outspread wings standing on the Castle Ehrenbreitstein, encircled by the words ''U.S. ARMY OF OCCUPATION OF GERMANY'' and three stars at the bottom of the medal. The ribbon is 1⅜ inches in width consisting of the following stripes: 1/16 inch Ultramarine Blue 67118; 1/16 inch Scarlet 67111; 3/16 inch White 67101; ¾ inch Black 67138 (center); 3/16 inch White; 1/16 inch Scarlet; 1/16 inch Ultramarine Blue.

§ 578.54 World War I Victory Medal.

(a) The World War I Victory Medal was established by WDGO 48, 1919. The medal is awarded for service between April 6, 1917 and November 11, 1918 or with either of the following expeditions:

(1) American Expeditionary Forces in European Russia between November 12, 1918 and August 5, 1919.

(2) American Expeditionary Forces Siberia between November 23, 1918 and April 1, 1920.

(b) Battle clasps, service clasps, and service stars are authorized appurtenances to be worn on the World War I Victory Medal. (See § 578.61 for specific details.)

(c) *Description.* The medal is Bronze and 1⅜ inches in diameter. On the obverse is a winged Victory, standing full length and full face. On the reverse is the inscription ''THE GREAT WAR FOR CIVILIZATION'' and the United States shield with the letters ''U.S.'' surmounted by a fasces, and on either side the names of the allied and associated nations. The lapel button is a five-pointed star ⅝-inch in diameter on a wreath with the letters ''U.S.'' in the center. The medal is suspended by a ring from a silk ribbon 1⅜ inches in width, representing two rainbows placed in juxtaposition and having the red in the middle.

§ 578.55 Service medals and ribbons no longer available for issue.

The medals listed below are no longer issued by HQDA. They may be purchased if desired from civilian dealers in military insignia and some Army exchanges.

(a) *Civil War Campaign Medal.* This medal was established by WDGO 12, 1907. It is awarded for service between April 15, 1861 and April 9, 1865, or in Texas between April 15, 1861 and August 20, 1866.

(b) *Indian Campaign Medal.* This medal was established by WDGO 12, 1907. It is awarded for service in a campaign against any tribes or in any areas listed below, during the indicated period.

(c) *Spanish Campaign Medal.* This medal was established by WDGO 5, 1905. It is awarded for service ashore in, or on the high seas en route to, any of the following countries:

(1) Cuba between May 11 and July 17, 1898.

(2) Puerto Rico between July 24 and August 13, 1898.

(3) Philippine Islands between June 30 and August 16, 1898.

(d) *Spanish War Service Medal.* This medal was established by the act of July 9, 1918 (40 Stat. 873). It is awarded for service between April 20, 1898 and April 11, 1899, to persons not eligible for the Spanish Campaign Medal.

(e) *Army of Cuban Occupation Medal.* This medal was established by WDGO 40, 1915. It is awarded for service in Cuba between July 18, 1898 and May 20, 1902.

(f) *Army of Puerto Rican Occupation Medal.* This medal was established by War Department Compilation of Orders, changes 15, February 4, 1919. It is awarded for service in Puerto Rico between August 14 and December 10, 1898.

(g) *Philippine Campaign Medal.* This medal was established by WDGO 5, 1905. It is awarded for service in the Philippine Islands under any of the following conditions:

(1) Ashore between February 4, 1899 and July 4, 1902.

(2) Ashore in the Department of Mindanao between February 4, 1899 and December 31, 1904.

(3) Against the Pulajanes on Leyte between July 20, 1906 and June 30, 1907, or on Samar between August 2, 1904 and June 30, 1907.

(4) With any of the following expeditions: (i) Against Pala on Jolo between April and May 1905.

(ii) Against Datu Ali on Mindanao in October 1905.

(iii) Against hostile Moros on Mount Bud-Dajo, Jolo, March 1906.

(iv) Against hostile Moros on Mount Bagsac, Jolo, between January and July, 1913.

(v) Against hostile Moros on Mindanao or Jolo between 1910 and 1913.

(5) In any action against hostile natives in which U.S. troops were killed or wounded between February 4, 1899 and December 31, 1913.

(h) *Philippine Congressional Medal.* This medal was established by the act of June 29, 1906 (34 Stat. 621). It is awarded for service meeting all the following conditions:

(1) Under a call of the President entered the Army between April 21 and October 26, 1898.

(2) Served beyond the date on which entitled to discharge.

(3) Ashore in the Philippine Islands between February 4, 1899 and July 4, 1902.

(i) *China Campaign Medal.* This medal was established by WDGO 5, 1905. It is awarded for service ashore in China with the Peking Relief Expedition between June 20, 1900 and May 27, 1901.

(j) *Army of Cuban Pacification Medal.* This medal was established by WDGO 96, 1909. It is awarded for service in Cuba between October 6, 1906 and April 1, 1909.

(k) *Mexican Service Medal.* This medal was established by WDGO 155, 1917. It is awarded for service in any of the following expeditions or engagements:

(1) Vera Cruz Expedition in Mexico between April 24 and November 26, 1914.

(2) Punitive Expedition in Mexico between March 14, 1916 and February 7, 1917.

(3) Buena Vista, Mexico, December 1, 1917.

(4) San Bernardino Canon, Mexico, December 26, 1917.

(5) Le Grulla, Texas, January 8 and 9, 1918.

(6) Pilares, Mexico, March 28, 1918.

(7) Nogales, Arizona, November 1 to 5, 1915 or August 27, 1918.

(8) El Paso, Texas, and Juarez, Mexico, June 15 and 16, 1919.

(9) Any action against hostile Mexicans in which U.S. troops were killed or wounded between April 12, 1911 and February 7, 1917.

(l) *Mexican Border Service Medal.* This medal was established by the act of July 9, 1918 (40 Stat. 873). It was awarded for service between May 9, 1916 and March 24, 1917, or with the Mexican Border Patrol between January 1, 1916 and April 6, 1917, to persons not eligible for the Mexican Service Medal.

§ 578.56 United States Unit Awards.

(a) *Intent.* Awards are made to organizations when the heroism displayed or meritorious service performed is a result of group effort.

(b) *Announcement.* All unit awards approved at HQDA will be announced in HQ, DAGO.

(c) *Presentation.* Unit awards will be presented at an appropriate formal ceremony at the earliest practicable date after the award is announced. FM 22–5 prescribes the ceremony for presentation of unit awards at a formal review.

§ 578.57 Presidential Unit Citation.

(a) *Criteria.* The Presidential Unit Citation (PUC) (re-designated from the Distinguished Unit Citation on November 3, 1966) is awarded to unit of the Armed Forces of the United States and cobelligerent nations for extraordinary heroism in action against an armed enemy occurring on or after December 7, 1941. The unit must display such gallantry, determination, and esprit de corps in accomplishing its mission under extremely difficult and hazardous conditions as to set it apart from and above other units participating in the same campaign. The degree of heroism required is the same as that which would warrant award of a Distinguished Service Cross to an individual. Extended periods of combat duty or participation in a large number of operational missions, either ground or air is not sufficient. This award will normally be earned by units that have participated in single or successive actions covering relatively brief time spans. It is not reasonable to presume that entire units can sustain Distinguished Service Cross performance for extended periods except under the most unusual circumstances. Recommendations for units larger than brigade will not be submitted.

(b) *Awarding authorities.* Approval authority for award of the PUC is the President of the United States who delegated authority to the Service Secretaries.

(c) *Award elements.* The award elements for the PUC (Army) are as follows:

(1) PUC Streamer (Army);

(2) PUC Emblem (Army);

(3) PUC Certificate and Citation;

(4) DAGO.

(d) *Description.* The PUC Emblem is 1 7/16 inches wide and 9/16 inch in height. The emblem consists of a 1/16 inch wide gold frame with laurel leaves, which encloses an ultramarine blue 67118 ribbon.

§ 578.58 Valorous Unit Award.

(a) *Criteria.* The Valorous Unit Award (VUA) may be awarded to units of the Armed Forces of the United States for extraordinary heroism in action against an armed enemy of the United States while engaged in military operations involving conflict with an opposing foreign force or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party for actions occurring on or after August 3, 1963.

(b) *Requirements.* The VUA requires a lesser degree of gallantry, determination, and esprit de corps than that required for the Presidential Unit Citation. Nevertheless, the unit must have performed with marked distinction under difficult and hazardous conditions in accomplishing its mission so as to set it apart from and above other units participating in the same conflict. The degree of heroism required is the same as that which would warrant award of the Silver Star to an individual. Extended periods of combat duty or participation in a large number of operational missions, either ground or air is not sufficient.

(c) *Unit eligibility.* This award will normally be earned by units that have participated in single or successive actions covering relatively brief time spans. It is not reasonable to presume that entire units can sustain Silver Star performance for extended periods except under the most unusual circumstances. Recommendations for units larger than brigade will not be submitted.

(d) *Awarding authorities.* The Deputy Chief of Staff (DCS), G–1 is approval authority for the VUA. Recommendations for award of the VUA will be forwarded to Commander, USA HRC, ATTN: AHRC–PDO–PA, Alexandria, VA 22332–0471, for processing to the DCS, G–1 for final action.

(e) *Award elements.* The award elements for the VUA are as follows:

(1) VUA Streamer;

(2) VUA Emblem;

(3) VUA Certificate and Citation;

(4) DAGO.

(f) *Description.* The VUA emblem is 1 7/16 inches wide and 9/16 inch in height. The emblem consists of a 1/16 inch wide gold frame with laurel leaves which encloses a ribbon of the pattern of the Silver Star Medal ribbon centered on a red ribbon. The stripe dimensions of the ribbon are: 3/8 inch old glory red 67156; 1/16 inch ultramarine blue 67118; 1/64 inch white 67101; 3/32 inch ultramarine blue 67118; 3/32 inch white 67101; center 3/32 inch old glory red 67156; 3/32 inch white 67101; 3/32 inch ultramarine blue 67118; 1/64 inch white 67101; 1/16 inch ultramarine blue; and 3/8 inch old glory red 67156. The streamers are the same pattern as the silver star medal ribbon.

§ 578.59 Meritorious Unit Commendation.

(a) *Criteria.* (1) The Meritorious Unit Commendation (MUC) (Army) (previously called the Meritorious Service Unit Plaque) is awarded to units for exceptionally meritorious conduct in the performance of outstanding services for at least 6 continuous months during the period of military operations against an armed enemy occurring on or after January 1, 1944. Service in a combat zone is not required, but must be directly related to the combat effort. Units based in the continental United States are excluded from this award, as are other units outside the area of operation. The unit must display such outstanding devotion and superior performance of exceptionally difficult tasks as to set it apart and above other units with similar missions. The degree of achievement required is the same as that which would warrant award of the Legion of Merit to an individual. Recommendations for units larger than brigade will not be submitted. For

services performed during World War II, awards will be made only to service units and only for services performed between January 1, 1944 and September 15, 1946.

(2) Effective March 1, 1961, the MUC was authorized for units and/or detachments of the Armed Forces of the United States for exceptionally meritorious conduct in performance of outstanding services for at least 6 continuous months in support of military operations. Service(s), as used in this paragraph, is interpreted to relate to combat service support type activities and not to the type of activities performed by senior headquarters, combat, or combat support units.

(b) *Awarding authorities*. Approval authority for the MUC is the Deputy Chief of Staff (DCS), G–1. Recommendations for award of the MUC will be forwarded to Commander, USA HRC, ATTN: AHRC–PDO–PA, Alexandria, VA 22332–0471, for processing to the DCS, G–1 for final action.

(c) *Award elements*. The award elements for the MUC are as follows:

(1) MUC Streamer;

(2) MUC Emblem;

(3) MUC Certificate and Citation; and

(4) DAGO.

(d) *Description*. The MUC emblem is 1 7/16 inches wide and 9/16 inch in height. The emblem consists of a 1/16 inch wide gold frame with laurel leaves which encloses a scarlet 67111 ribbon. The previously authorized emblem was a gold color embroidered laurel wreath, 1 5/8 inches in diameter on a 2 inch square of olive drab cloth.

§ 578.60 Army Superior Unit Award.

(a) *Criteria*. The Army Superior Unit Award (ASUA) was created in 1985 to recognize outstanding meritorious performance of a unit during peacetime of a difficult and challenging mission under extraordinary circumstances. Circumstances may be deemed to be extraordinary when they do not represent the typical day-to-day circumstances under which the unit normally performs, or may reasonably be expected to perform, its peacetime mission. The following additional criteria also applies:

(1) The unit must display such outstanding devotion and superior performance of exceptionally difficult tasks as to set the unit apart from and above other units with similar missions. For the purpose of this award, peacetime is defined as any period during which wartime or combat awards are not authorized in the geographical area in which the mission was executed. The ASUA may be awarded to units that distinguish themselves while conducting humanitarian missions for a minimum of 30 days, however, the ASUA will not be awarded if the same act or period of service has already been recognized by another unit award.

(2) The award applies to both TO&E units and TDA organizations of battalion size or equivalent. TDA organizations may be considered for this award, even if comprised mostly of civilians. As an exception to policy, organizations larger than battalion equivalent size may also be submitted, but the submitting headquarters must take care to highlight the logic associated with the request to justify an exception to policy.

(b) *Approval authority*. The approval authority for the ASUA is the Deputy Chief of Staff (DCS), G–1. Recommendations for award of the ASUA will be forwarded to Commander, USA HRC, ATTN: AHRC–PDO–PA, Alexandria, VA 22332–0471, for processing to the DCS, G–1 for final action.

(c) *Award elements*. The award elements for the ASUA are as follows:

ASUA Streamer; ASUA Emblem; ASUA Certificate and Citation; DAGO; Army Superior Unit Award Lapel Pin. The lapel pin is authorized for issue and wear by Department of the Army civilians in the employ of the decorated unit. Those individuals employed with the unit during the cited period may wear the lapel pin permanently. Those currently employed with a decorated unit, but who were not employed during the cited period may wear the lapel pin on a temporary basis as long as they remain employed by the unit. The lapel pin is also authorized for optional purchase and wear on civilian clothing by qualified military personnel. Permanent and temporary wear is governed by the provisions of AR 670–1.

(d) *Description*. The ASUA emblem is 1 7/16 inches wide and 9/16 inch in height. The emblem consists of a 1/16 inch wide gold frame with laurel leaves which encloses a ribbon of the following pattern: 17/32 inch scarlet 67111; 1/32 inch yellow 67103; 1/4 inch green 67129; 1/32 inch yellow 67103; and 17/32 inch scarlet 67111. The streamers are the same pattern as the emblem ribbon.

§ 578.61 Appurtenances to military decorations.

Appurtenances are devices affixed to service or suspension ribbons or worn instead of medals or ribbons. They are worn to denote additional awards, participation in a specific event, or other distinguished characteristics of the award. The following is a list of authorized appurtenances:

(a) *Oak Leaf Clusters*. A bronze or silver twig of four oak leaves with three acorns on the stem, 13/32-inch long for the suspension ribbon, and 5/16-inch long for the service ribbon bar and the unit award emblem is issued to denote award of second and succeeding awards of decorations (other than the Air Medal), the Army Reserve Components Achievement Medal, and unit awards. A silver Oak Leaf Cluster is worn instead of five bronze Oak Leaf Clusters. If the number of authorized Oak Leaf Clusters exceeds four and will not fit on a single ribbon, a second ribbon is authorized for wear. When wearing the second ribbon, place it after the first ribbon; the second ribbon counts as one award. Wear no more than four Oak Leaf Clusters on each ribbon. If the receipt of future awards reduces the number of Oak Leaf Clusters sufficiently (that is, a silver oak leaf cluster for five awards), remove the second ribbon and place the appropriate number of devices on a single ribbon. Oak Leaf Clusters are not issued for the Legion of Merit awarded in degrees to foreign nationals. Five-sixteenths inch Oak Leaf Clusters joined together in series of 2, 3, and 4 clusters are authorized for optional purchase and wear on service ribbons, and unit award emblems.

(b) *Numerals*. Arabic numerals 3/16 inch in height are issued instead of a medal or ribbon for second and succeeding awards of the Air Medal, Multinational Force and Observers Medal, Overseas Service Ribbon and the Army Reserve Components Overseas Training Ribbon. The ribbon denotes the first award and numerals starting with the numeral 2 denote the number of additional awards. The numeral worn on the NCO Professional Development Ribbon will denote the highest completed level of NCO development. The numerals are to be centered on the suspension ribbon of the medal or the ribbon bar.

(c) *''V'' device*. The ''V'' (Valor) device is a bronze block letter, V, 1/4-inch high with serifs at the top of the members. It is worn to denote participation in acts of heroism involving conflict with an armed enemy. It was originally worn only on the suspension and service ribbons of the Bronze Star Medal to denote an award made for heroism (valor). Effective February 29, 1964, the ''V'' device was also authorized for wear on the Air Medal and Army Commendation Medal for heroic acts or valorous deeds not warranting awards of the Distinguished Flying Cross or the Bronze Star Medal with ''V'' device. Effective June 25, 1963, the ''V'' device

was authorized additionally for wear on the Joint Service Commendation Medal when the award is for acts of valor (heroism) during participation in combat operations. In the case of multiple ''V'' devices for the same award, only one ''V'' device is worn on the service ribbons.

(d) *''M'' device.* The ''M'' (Mobilization) Device is a bronze letter, M, ¼-inch high with serifs at the bottom of the members. It is authorized for wear on the Armed Forces Reserve Medal by members of the Reserve Components who are called or who volunteer and serve on active duty in support of specific U.S. Military operations or contingencies designated by the Secretary of Defense, as defined in 10 U.S.C. 101(a)(13). AGR members who receive orders changing their current duty status (legal authority under which they perform duty), their duty location, or assignment to support a contingency operation are also eligible for award of the ''M'' Device.

(e) *Clasps.* They are authorized for wear on the Army Good Conduct Medal, World War I Victory Medal, American Defense Service Medal, Army of Occupation Medal, and Antarctica Service Medal. All clasp, except the Army Good Conduct Medal clasp, are worn only on the suspension ribbon of the medal. The clasps are described as follows:

(1) The Army Good Conduct Medal clasp is a bar ⅛-inch by 1⅜ inches, of bronze, silver or gold, with loops indicative of each period of service. Paragraph 4–9 describes the clasps authorized for second and subsequent awards of the Army Good Conduct Medal.

(2) The World War I Victory Medal battle clasp is a bronze bar ⅛-inch by 1½ inches with the name of the campaign or the words ''Defensive Sector,'' and with a star at each end of the inscription. The campaigns are as follows:

(i) Cambrai;
(ii) Somme, Defensive;
(iii) Lys;
(iv) Aisne;
(v) Montdidier-Noyon;
(vi) Champagne-Marne;
(vii) Aisne-Marne;
(viii) Somme, Offensive;
(ix) Oise-Aisne;
(x) Ypres-Lys;
(xi) St. Mihiel;
(xii) Meuse-Argonne;
(xiii) Vittorio-Veneto;
(xiv) Defensive Sector.

(3) The World War I Victory Medal service clasp is a bronze bar ⅛-inch by 1½ inches with the name of the country which the service was performed inscribed thereon. The service clasps authorized are as follows:

(i) England;
(ii) France;
(iii) Italy;
(iv) Russia;
(v) Siberia.

(4) The American Defense Service Medal clasp is a bronze bar ⅛-inch by 1½ inches with the words ''Foreign Service'' and with a star at each end of the inscription.

(5) The Army of Occupation Medal clasp is a bronze bar ⅛-inch by 1½ inches with the word ''Germany'' or ''Japan'' inscribed thereon, to denote occupation duty rendered in Europe and/or the Far East.

(6) The Antarctica Service Medal is a clasp bearing the words ''Wintered Over'' for wear on the suspension ribbon of the medal awarded in bronze for the first winter, in gold for the second winter, and in silver for the third winter.

(f) *Service stars.* Are worn on campaign and service ribbons to denote an additional award. The service star is a bronze or silver five-pointed star 3/16-inch in diameter. A silver star is worn instead of five bronze service stars. The bronze service star is also affixed to the parachutist badge to denote participation in a combat parachutist jump, retroactive to December 7, 1941. See § 578.74 on Parachutist badges for criteria for award of the combat parachutist badge. See AR 670–1 for proper wear of the service stars. Service stars are authorized for wear on the following campaign and service medals and or ribbons:

(1) World War I Victory Medal;
(2) American Defense Service Medal;
(3) American Campaign Medal;
(4) Asiatic-Pacific Campaign Medal;
(5) European-African-Middle Eastern Campaign Medal;
(6) Korean Service Medal;
(7) Armed Forces Expeditionary Medal;
(8) Vietnam Service Medal;
(9) National Defense Service Medal;
(10) Humanitarian Service Medal;
(11) Prisoner of War Medal;
(12) Southwest Asia Service Medal;
(13) Military Outstanding Volunteer Service Medal.

(g) *Arrowhead.* The arrowhead is a bronze replica of an Indian arrowhead ¼-inch high. It denotes participation in a combat parachute jump, helicopter assault landing, combat glider landing, or amphibious assault landing, while assigned or attached as a member of an organized force carrying out an assigned tactical mission. A soldier must actually exit the aircraft or watercraft, as appropriate, to receive assault credit. Individual assault credit is tied directly to the combat assault credit decision for the unit to which the soldier is attached or assigned at the time of the assault. Should a unit be denied assault credit, no assault credit will accrue to the individual soldiers of that unit. It is worn on the service and suspension ribbons of the Asiatic-Pacific Campaign, European-African-Middle Eastern Campaign, Korean Service Medal, Vietnam Service Medal, Armed Forces Expeditionary Medal, and Global War on Terrorism Expeditionary. Only one arrowhead will be worn on any ribbon.

(h) *Ten-Year Device.* The Ten-year device is authorized for wear on the Armed Forces Reserve Medal to denote each succeeding 10-year period as follows: (1) A bronze hourglass shall be awarded upon completion of the first 10-year period award.

(2) A silver hourglass shall be awarded upon completion of the second 10-year period award.

(3) A gold hourglass shall be awarded upon completion of the third 10-year period award.

(4) A gold hourglass, followed by a bronze hourglass shall be awarded upon completion of the fourth 10-year period award.

(i) Berlin Airlift Device. A gold colored metal miniature of a C–54 type aircraft of ⅜-inch wingspan, other dimensions proportionate. It is worn on the service and suspension ribbons of the Army of Occupation Medal. (See § 578.46 Army of Occupation Medal)

(j) *Army Astronaut Device.* A gold colored device, 7/16-inches in length, consisting of a star emitting three contrails encircled by an elliptical orbit. It is awarded by the Chief of Staff, Army, to personnel who complete a minimum of one operational mission in space (50 miles above earth) and is affixed to the appropriate Army Aviator Badge, Flight Surgeon Badge, or Aviation Badge awarded to the astronaut. Individuals who have not been awarded one of the badges listed above but who meet the other astronaut criteria will be awarded the basic Aviation Badge with Army Astronaut Device.

§ 578.62 Service ribbons.

A ribbon identical in color with the suspension ribbon of the service medal it represents, attached to a bar 1⅜ inches in width and ⅜ inch in length, equipped with a suitable attaching device. A service ribbon is issued with each service medal.

§ 578.63 Lapel buttons.

(a) Lapel buttons are miniature replicas of military decorations; service

medals and ribbons; and identification badges. Lapel buttons are worn only on civilian clothing. The buttons will be worn on the left lapel of civilian clothing for male personnel and in a similar location for female personnel.

(b) Lapel buttons for military decorations. Lapel buttons for military decorations are issued in the following two forms: (1) A rosette, ½-inch in diameter, for the Medal of Honor.

(2) A colored enamel replica (⅛-inch by 21/32-inch) for the service ribbon for other decorations.

(c) *Lapel buttons for badges.* The only badges that have an approved lapel button are certain identification badges as follows:

(1) Presidential Service Badge;

(2) Vice Presidential Service Badge;

(3) Office of the Secretary of Defense Identification Badge;

(4) Joint Chiefs of Staff Identification Badge; and

(5) Army Staff Identification Badge.

(d) *World War I Victory Button.* A five-pointed star ⅝-inch in diameter on a wreath with the letters ''US'' in the center. For persons wounded in action, the lapel button is silver; for all others, the lapel button is bronze. Eligibility requirements are the same for the World War I Victory Medal.

(e) *Honorable Service Lapel Button (World War II Victory Medal).* A button of gold-color metal consists of an eagle perched within a ring composed of a chief and 13 vertical stripes. The button is 7/16-inch high and ⅝-inch wide. Eligibility requirements are honorable Federal military service between September 8, 1939 and December 31, 1946.

(f) *Lapel button for service prior to September 8, 1939.* (Not issued or sold by the Department of the Army.) A button 7/16-inch high and ⅝-inch wide, of gold-color metal consists of an eagle perched within a ring which displays seven white and six red vertical stripes and a blue chief bearing the words ''National Defense.'' It may be worn only by a person who served honorably before September 8, 1939 as an enlisted man, warrant officer, nurse, contract surgeon, veterinarian, or commissioned officer, in the Regular Army or a Citizen's Military Training Camp for 2 months, or in the National Guard, Enlisted Reserve Corps, or Senior ROTC for 1 year, or in junior ROTC for 2 years.

(g) *Army Lapel Button.* The Army Lapel Button is a gratuitous issue item made up of a minute man in gold color on a red enamel disk surrounded by 16-pointed gold rays with an outside diameter of 9/16-inch. Eligibility requirements are as follows:

(1) Soldiers transitioning with an honorable characterization of service (those being transferred to another component for completion of a military service obligation, and those receiving an Honorable Discharge Certificate).

(2) Non-adverse separation provision.

(3) Minimum 9 months continuous service—a break is 24 hours or more.

(4) Active Federal service on or after April 1, 1984; or, service in a Ready Reserve unit organized to serve as a unit (National Guard unit or Army Reserve troop program unit) on or after July 1, 1986.

(5) Retroactive issuance is not authorized.

(6) No soldier separating from the Service is to be awarded more than one Army Lapel Button.

(h) *U.S. Army Retired Lapel Button.* Retired Army personnel who are in possession of DD Form 2 (U.S. Uniformed Services Identification Card) (Retired)) are eligible to wear the Army Retired Lapel Button. Commanders will present the U.S. Army Retired Lapel Button to Army personnel at an appropriate ceremony before they retire.

(i) *Active Reserve Lapel Button.* The Active Reserve Lapel Button is authorized for active membership in the Ready Reserve of the Army. It is made up of a minute man in gold color on a bronze color base and is 11/16-inch in length. The button is an optional purchase item, not issued or sold by the Department of the Army. It is not worn on the uniform.

(j) *Lapel Button for Korean Augmentation to the U.S. Army (KATUSA).* The KATUSA Lapel Button (KLB) was approved by the Secretary of the Army on March 22, 1988 as a gratuitous issue item. The KLB is a round disk with an outside diameter of 9/16-inch that is comprised of a Korean Taeguk that consists of the characteristics from both the U.S. and Republic of Korea National Flags resting on a white background. The words ''Honorable Service * KATUSA'' are situated on the border of the outer edge of the KLB.

(1) The following requirements must be met to be eligible for award of the KLB:

(i) Individual must have been a Republic of Korea Army soldier who has been assigned as a KATUSA soldier to a U.S. Army unit or activity for minimum of 9 months of continuous honorable active service on or after March 22, 1988.

(ii) Must be separating from active duty with the Republic of Korea Army.

(iii) Disqualifying characterization of service for the award of the KLB is identical with that used for the Army Lapel Button.

(2) Issuance requirements are as follows:

(i) The KLB will be awarded to all eligible KATUSA soldiers.

(ii) The U.S. Army unit commander will coordinate with the appropriate Republic of Korea staff officer/NCO to obtain Republic of Korea Army concurrence prior to presentation of the KLB.

(iii) Presentation will normally be made by the U.S. Army unit commander to which last assigned prior to separation from active service or by his designated U.S. Army commissioned officer representative during a troop formation or other appropriate ceremony.

(3) Orders will not be published to confirm award of the KLB.

(k) *Gold Star Lapel Button.* The Gold Star Lapel Button was established by Act of Congress (Pub. L. 80–306) August 1, 1947, codified at 10 U.S.C. 1126 in order to provide an appropriate identification for widows, widowers, parents, and next of kin of members of the Armed Forces of the United States who lost their lives during World War I, April 6, 1917 to March 3, 1921; World War II, September 8, 1939 to July 25, 1947; any subsequent period of armed hostilities in which the United States was engaged before July 1, 1958 (United Nations action in Korea, June 27, 1950 to July 27, 1954); or who lost their lives after June 30, 1958, while engaged in an action against an enemy of the United States; or while engaged in military operations involving conflict with an opposing foreign force; or while serving with friendly foreign forces engaged in an armed conflict in which the United States is not a belligerent party against an opposing Armed Force; or who lost or lose their lives after March 28, 1973, as a result of an international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the Secretary of Defense; or while serving in a military operation while serving outside the United States (including the commonwealths, territories, and possessions of the United States) as part of a peacekeeping force.

(1) The Gold Star Lapel Button consists of a gold star on a purple circular background, bordered in gold and surrounded by gold laurel leaves. On the reverse is the inscription ''United States of America, Act of Congress, August 1966'' with space for engraving the initials of the recipient. Gold Star Lapel Buttons inscribed

August 1947 may be issued until present inventories are exhausted.

(2) One Gold Star Lapel Button will be furnished without cost to the widow or widower, to each of the parents, each child, stepchild, child through adoption, brother, half brother, sister, and half sister of a member of the Armed Forces who lost his or her life while in the active military service during the periods indicated above. The term ''widow or widower'' includes those who have since remarried, and the term ''parents'' includes mother, father, stepmother, stepfather, mother through adoption, father through adoption, and foster parents who stood in loco parentis. Request for replacement of the Gold Star Lapel Button (lost, destroyed or unserviceable) will be submitted on DD Form 3 (Application for Gold Star Lapel Button) to NPRC (see § 578.16 (a)(3).)

(3) Each casualty area commander and major overseas commander will stock Gold Star Lapel Buttons and ensure that survivor assistance officers are provided them for issue to eligible next of kin. Normally, delivery should not be made before to the first visit to the next of kin following interment.

(l) *Lapel Button for Next of Kin of Deceased Personnel.* The Lapel Button, Next of Kin of Deceased Personnel is provided to widows(ers), parents, and primary next of kin of armed services members who lose their lives while serving on active duty or while assigned in an Army Reserve or Army National Guard unit in a drill status.

(1) The button consists of a gold star within a circle (commemorating honorable service) surrounded by sprigs of oak (referring to the Army, Navy, Air Force, and Marine Corps).

(2) One lapel button will be furnished without cost to the widow or widower, to each of the parents, each child, stepchild, child through adoption, brother, half brother, sister, and half sister of a member of the Armed Forces who lost his or her life while on active duty. The term widow or widower includes those who have since remarried, and the term parents includes mother, father, stepmother, stepfather, mother through adoption, father through adoption, and foster parents who stood in place of a parent.

(3) Casualty area commands will stock the button and ensure that survivor assistance officers issue them to eligible next of kin.

(4) The Lapel Button, Next of Kin of Deceased Personnel is authorized for issue retroactive to March 29, 1973. The next of kin of soldiers who died since that date may request issue of the button by writing to the NPRC (see § 578.16 (a)(3)). Furnish the name, grade, SSN, and date of death of the deceased soldier. The names and relationships of the next of kin must also be provided.

(m) *Army Superior Unit Award Lapel Pin.* The Army Superior Unit Award Lapel Pin is authorized for issue and wear by DA civilians in the employ of a unit awarded the Army Superior Unit Award. The lapel pin is also authorized for optional purchase and wear on civilian clothing by qualified military personnel.

§ 578.64 Miniature decorations.

(a) *Decorations.* Miniature replicas of all medals except the Medal of Honor and the Legion of Merit in the Degrees of Chief Commander and Commander are authorized for wear on certain uniforms instead of the issued medals. Miniatures of decorations are issued only to foreign nationals and with the award of the Distinguished Service Medal to U.S. personnel.

(b) *Miniature badges.* Replicas of combat and special skill badges in miniature size are authorized for wear on certain uniforms instead of the full-size badges.

§ 578.65 Supply, Service, and Requisition of Medals and Badges.

(a) Medals and appurtenances listed are issued by DA:

(1) Decorations;
(2) Service medals;
(3) Service ribbons;
(4) Palms;
(5) Rosettes;
(6) Clasps;
(7) Arrowheads;
(8) Service stars;
(9) French Fourragere;
(10) Netherlands Orange Lanyard;
(11) Army Good Conduct Medals;
(12) Oak Leaf Cluster;
(13) Numerals;
(14) Letter ''V'' devices;
(15) Certificate for decorations;
(16) Lapel buttons for decorations;
(17) Miscellaneous lapel buttons listed in Lapel buttons for badges and Lapel buttons for service;
(18) Ten-year devices;
(19) Berlin Airlift devices;
(20) Containers for decorations;
(21) Miniature decorations to foreign military personnel;
(22) Letter ''V'' Device;
(23) Letter ''M'' Device;

(b) Badges and appurtenances listed below are issued by Department of the Army:

(1) Combat and special skill badges;
(2) Basic Marksmanship Designation Badges;
(3) Distinguished marksmanship designation badges;
(4) Excellence in competition badges;
(5) Basic marksmanship qualification badges and bars;
(6) Army Staff Identification Badge;
(7) The Guard, Tomb of the Unknown Soldier Identification Badge (an item of organizational equipment);
(8) Army ROTC Nurse Cadet Program Identification Badge;
(9) Drill Sergeant Identification Badge;
(10) U.S. Army Recruiter Identification Badge;
(11) Career Counselor Badge;
(12) Army National Guard Recruiting and Retention Identification Badge;
(13) U.S. Army Reserve Recruiter Identification Badge.

§ 578.66 Original issue or replacement.

(a) *General.* All U.S. Army medals are presented without cost to an awardee. Replacement of medals or service ribbons for individuals not on active duty may be made at cost price. Requests will be honored from the original recipient of the award, or if deceased, from his or her primary next of kin in the following order: surviving spouse, eldest surviving child, father or mother, eldest surviving brother or sister, or eldest surviving grandchild.

(b) Issue or replacement of service medals and service ribbons antedating the World War I Victory Medal is no longer accomplished. These awards are not available from the supply system, but may be purchased from private dealers in military insignia.

(c) No money should be mailed until instructions are received by NPRC. Requests for medals should be directed to the following addresses as shown below.

(1)(i) Request for: Personnel in active Federal military service or in the Army National Guard or U.S. Army Reserve.

(ii) Submit to: Unit Commander.

(2)(i) Request for: Medals on behalf of individuals having no current U.S. Army status or deceased prior to October 1, 2002.

(ii) Submit to: National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100.

(3)(i) Request for: Medals for individuals who retired, were discharged or died (except general officers) after October 1, 2002.

(ii) Submit to: Commander, U.S. Army Human Resources Command, ATTN: AHRC–CC–B, 1 Reserve Way, St. Louis, MO 63132–5200.

(4)(i) Request for: Personnel receiving retired pay, except general officers.

(ii) Submit to: National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100.

(5)(i) Request for: Retired general officers.

(ii) Submit to: Commander, USA HRC, ATTN: AHRC–PDO–PA, 200 Stovall Street, Alexandria, VA 22332–0471.

(d) *Issue of medals, other than Army.* Medals and appurtenances awarded while in active Federal service in one of the other U.S. military Services will be issued on individual request to appropriate Service as shown below.

(1)(i) Request for: Navy awards.

(ii) Submit to: Office of the Chief of Naval Operations, Awards, Code: 09B33, 2000 Navy Pentagon, Washington, DC 20350–2000.

(2)(i) Request for: Air Force awards.

(ii) Submit to: Commander, U.S. Air Force Personnel Center/DPPPRA, 550 C Street West, Suite 12, Randolph Air Force Base, TX 78150–6001.

(3)(i) Request for: Marine Corps awards.

(ii) Submit to: Commandant, U.S. Marine Corps, Manpower and Reserve Affairs, Code: MMMA, 3280 Russell Road, Quantico, VA 22134–5103.

(4)(i) Request for: Coast Guard awards.

(ii) Submit to: Commandant, United States Coast Guard, 2100 Second Street, SW, ATTN: G–PS–5/TP41, Washington, DC 20593–0001.

§ 578.67 Manufacture, sale, and illegal possession.

Sections 507.1 to 507.8 of this chapter prescribe:

(a) Restrictions on manufacture and sale of service medals and appurtenance by civilians.

(b) Penalties for illegal possession and wearing of service medals and appurtenances.

§ 578.68 Badges and tabs; general.

(a) *Purpose.* The purpose of awarding badges is to provide for public recognition by tangible evidence of the attainment of a high degree of skill, proficiency, and excellence in tests and competition, as well as in the performance of duties. Awards of badges promote esprit de corps, and provide an incentive to greater effort, thus becoming instrumental in building and maintaining morale. Types of badges authorized to be awarded as hereinafter prescribed, are combat and special skill badges, marksmanship qualification badges, identification badges and tabs.

(b) *Recommendations and approval authority.* (1) Recommendations for awards of badges will be submitted by memorandum or DA Form 4187 through command channels to the commander authorized to make the award.

(2) Badges may be approved and awarded in the field only by the commanders authorized to award the respective badge.

(3) Award of badges to Active Army personnel which cannot be resolved by local commanders will be forwarded through command channels to HQ, USA HRC, (see address § 578.3(c)).

(c) *Posthumous awards.* When an individual who has qualified for a badge dies before the award is made, the badge may be presented to the next of kin.

(d) *Retroactive awards.* Retroactive awards of the Combat Infantryman Badge and the Combat Medical Badge may be made to fully qualified individuals. Such awards will not be made except where evidence of injustice is presented. Active duty soldiers will forward their applications through command channels to HQ, AHRC, (see address § 578.3(c)). Reserve Component soldiers should address their application to Commander, USA HRC-St. Louis, One Reserve Way, St. Louis, MO 63132–5200. Retirees and veterans should address their application to the NPRC (see § 578.16(a)(3) for address).

(e) *Announcement of awards.* Permanent awards of badges, except basic marksmanship qualification badges, identification badges, and the Physical Fitness Badge, will be announced in Permanent Orders by commanders authorized to make the award or Permanent Orders of HQDA.

(f) *Presentation of awards.* Whenever practical, badges will be presented to military personnel in a formal ceremony. Presentations should be made as promptly as practical following announcement of awards, and when possible, in the presence of the troops with whom the recipients were serving at the time of the qualification.

(g) *Supply of badges.* (1) Badges listed below are issued by the DA.

(i) Combat and special skill badges;

(ii) Basic Marksmanship Designation Badges;

(iii) Distinguished marksmanship designation badges;

(iv) Excellence in competition badges;

(v) Basic marksmanship qualification badges and bars;

(vi) Army Staff Identification Badge;

(vii) The Guard, Tomb of the Unknown Soldier Identification Badge (an item of organizational equipment);

(viii) Army ROTC Nurse Cadet Program Identification Badge;

(ix) Drill Sergeant Identification Badge;

(x) U.S. Army Recruiter Identification Badge;

(xi) Career Counselor Badge;

(xii) Army National Guard Recruiting and Retention Identification Badge;

(xiii) U.S. Army Reserve Recruiter Identification Badge.

(2) Items not issued or sold by the DA:

(i) Identification badges, except as provided in paragraph (g)(1) of this section;

(ii) Lapel buttons for badges;

(iii) Certificates for badges;

(iv) Foreign badges;

(v) Miniature Combat Infantryman, Expert Infantryman, Combat Medical, Expert Field Medical, and Aviation badges;

(vi) Dress miniature badges. (Miniatures may be purchased from dealers in military insignia.)

(h) *Requisition.* Combat and special skill badges, basic marksmanship qualification badges, and authorized bars, may be requisitioned by commanders through normal channels. Requisitions will contain a statement that issue is to be made to authorized personnel. Commanders authorized to make the award may requisition bulk delivery of badges to meet needs for 60 days. Care should be taken that excessive stocks are not requisitioned. Initial issue or replacement for a badge lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was awarded, will be made upon application, without charge to military personnel on active duty and at stock fund standard price to all others.

(i) *Character of service.* A badge will not be awarded to any person who, subsequent to qualification therefore, has been dismissed, dishonorably discharged, or convicted of desertion by court-martial.

(j) *Special guidance.* (1) Effective September 30, 1986, local established special skill badges are no longer authorized for wear. Authority for major commanders to approve local badges is rescinded.

(2) The wear of badges issued by other Services is governed by AR 670–1. Those cases that cannot be resolved should be forwarded to Office of the Deputy Chief of Staff, G–1, ATTN: DAPE–HR–S, 300 Army Pentagon, Washington, DC 20310–0300.

(3) Authority must be obtained from HQ, USA HRC (AHRC–PDO–PA) before wearing on the Army uniform badges awarded by other U.S. Services and the Director of Civilian Marksmanship.

(k) *To whom awarded.* (1) The Combat Infantryman Badge may be awarded only to members of the U.S. Army.

(2) The Combat Medical Badge may be awarded only to members of the U.S. Army, Navy, or Air Force.

(3) Awards of U.S. Army badges to foreign military personnel will be made only with the prior consent of his or her Government and upon completion of the full requirements established for each badge. Foreign military personnel

may also qualify for Army badges while attending U.S. Army service schools or while participating in combined or joint operations.

(4) All other special skill badges may be earned by U.S. military personnel who qualify while performing honorable active duty or Reserve service in an active status or while formally assigned or attached to the U.S. Army.

(5) In certain cases, civilian personnel may be awarded special skill badges provided specific criteria are met. Requests or recommendations for award of special skill badges to civilians should be directed to designated approval authorities or Commander, USA HRC (see § 578.3(c) for address).

(6) Table 9 below lists the U.S. Army combat and special skill badges authorized and who is authorized to be awarded each badge.

TABLE 9.—U.S. ARMY BADGES AND TABS

Order of precedence may be awarded to:	Members of other services	Department of the army civilians	Foreign military personnel
Combat Infantryman Badge	YES	NO	YES.
Combat Medical Badge	YES	NO	NO.
Combat Action Badge	YES	NO	YES.
Expert Infantryman Badge	NO	NO	NO.
Expert Field Medical Badge	YES	YES	YES.
Parachutist Badges	YES	YES	YES.
Parachute Rigger Badge	YES	YES	YES.
Military Free-Fall Parachutist Badge	NO	NO	NO.
Army Aviator Badge	YES	YES	YES.
Astronaut Device	YES	YES	YES.
Flight Surgeon Badge	YES	YES	YES.
Divers Badges	YES	YES	YES.
Special Operations Diver Badge	YES	NO	NO.
Explosive Ordnance Disposal Badges	YES	YES	YES.
Pathfinder Badge	YES	YES	YES.
Air Assault Badge	YES	YES	YES.
Aviation Badge	YES	YES	YES.
Driver & Mechanic Badge	YES	YES	YES.
Ranger Tab	YES	YES	YES.
Special Forces Tab	YES	YES	YES.
Sapper Tab	YES	YES	YES.

Notes: 1. Badges authorized to foreign military personnel will be made only after obtaining prior consent from his or her Government and after completion of the full requirements established for each badge.
2. DA civilians must complete full requirements for the respective badge before it is awarded.

§ 578.69 Combat Infantryman Badge.

(a) *Specific eligibility requirements.* There are basically three requirements for award of the Combat Infantryman Badge (CIB):

(1) The Soldier must be an infantryman satisfactorily performing infantry duties.

(2) Must be assigned to an infantry unit during such time as the unit is engaged in active ground combat.

(3) Must actively participate in such ground combat. (Campaign or battle credit alone is not sufficient for award of the CIB.)

(b) The specific eligibility criteria for the CIB requires that:

(1) A Soldier must be an Army infantry or special forces officer (SSI 11 or 18) in the grade of colonel or below, or an Army enlisted Soldier or warrant officer with an infantry or Special Forces Military Occupational Specialties (MOS), who subsequent to December 6, 1941 has satisfactorily performed duty while assigned or attached as a member of an infantry, ranger or special forces unit of brigade, regimental, or smaller size during any period such unit was engaged in active ground combat. Eligibility for Special Forces personnel in MOS 18B, 18E, 18F, and 18Z (less Special Forces medical sergeant) accrues from December 20, 1989. Retroactive awards of the CIB to Special Forces personnel are not authorized prior to December 20, 1989.

(2) A recipient must be personally present and under hostile fire while serving in an assigned infantry or Special Forces primary duty, in a unit actively engaged in ground combat with the enemy. The unit in question can be of any size smaller than brigade. For example, personnel possessing an infantry MOS in a rifle squad of a cavalry platoon in a cavalry troop would be eligible for award of the CIB. Battle or campaign participation credit alone is not sufficient; the unit must have been in active ground combat with the enemy during the period.

(3) Personnel with other than an infantry or Special Forces MOS are not eligible, regardless of the circumstances. The infantry or Special Forces SSI or MOS does not necessarily have to be the Soldier's primary specialty, as long as the Soldier has been properly trained in infantry or Special Forces tactics, possesses the appropriate skill code, and is serving in that specialty when engaged in active ground combat as described above. Commanders are not authorized to make any exceptions to this policy.

(4) Awards will not be made to general officers or to members of headquarters companies of units larger in size than brigade.

(5) On or after September 18, 2001, the following rules apply:

(i) A Soldier must be an Army infantry or special forces (SSI 11 or 18) in the grade of colonel or below, or an Army enlisted Soldier or warrant officer with an infantry or special forces MOS, who has satisfactorily performed duty while assigned or attached as a member of an infantry, ranger or special forces unit of brigade, regimental, or smaller size during any period such unit was engaged in active ground combat, to close with and destroy the enemy with direct fire.

(ii) A Soldier must be personally present and under fire while serving in an assigned infantry or Special Forces primary duty, in a unit engaged in active ground combat, to close with and destroy the enemy with direct fire.

(iii) Soldiers possessing MOS of 18D (Special Forces Medical Sergeant) who satisfactorily perform special forces duties while assigned or attached to a special forces unit of brigade, regimental, or smaller size during any period such unit was engaged in active ground combat may be awarded the CIB. These Soldiers must have been personally present and engaged in active ground combat, to close with and destroy the enemy with direct fires. Retroactive awards under these criteria are not authorized for service prior to September 18, 2001.

(iv) Those Soldiers possessing MOS of 18D who qualify for award of the Combat Medical Badge from September 18, 2001 to June 3, 2005 will remain qualified for the badge. Upon request any such Soldier may be awarded the CIB instead of the Combat Medical Badge. In such instances, the Soldier must submit a request through the chain of command to the Commander, USA HRC (see § 578.3(c) for address), for conversion of the Combat Medical Badge to the CIB.

(v) Service members from other U.S. Armed Forces and foreign military (infantry and Special Forces equivalents) assigned or attached as a member of a U.S. Army infantry or Special Forces unit of brigade, regimental, or smaller size may be considered for award of the CIB. The specific eligibility requirements listed in § 578.69(a) must be met. Retroactive awards under these criteria are not authorized for service prior to September 18, 2001.

(c) The CIB is authorized for award for the following qualifying periods:

(1) World War II (December 7, 1941 to September 3, 1945).

(2) The Korean War (June 27, 1950 to July 27, 1953).

(3) Republic of Vietnam Conflict (March 2, 1961 to March 28, 1973), combined with qualifying service in Laos (April 19, 1961 to October 6, 1962).

(4) Dominican Republic (April 28, 1965 to September 1, 1966).

(5) Korea on the DMZ (January 4, 1969 to March 31, 1994).

(6) El Salvador (January 1, 1981 to February 1, 1992).

(7) Grenada (October 23 to November 21, 1983).

(8) Joint Security Area, Panmunjom, Korea (November 23, 1984).

(9) Panama (December 20, 1989 to January 31, 1990).

(10) Southwest Asia Conflict (January 17 to April 11, 1991).

(11) Somalia (June 5, 1992 to March 31, 1994).

(12) Afghanistan (Operation ENDURING FREEDOM, December 5, 2001 to a date to be determined).

(13) Iraq (Operation IRAQI FREEDOM, March 19, 2003 to a date to be determined).

(d) The special provisions authorized for the Vietnam Conflict, Laos, and Korea on the DMZ are outlined in paragraphs (d)(1) through (5) of this section.

(1) During the Vietnam Conflict, any officer whose branch is other than infantry who, under appropriate orders, has commanded a line infantry (other than a headquarters unit) unit of brigade, regimental, or smaller size for at least 30 consecutive days is deemed to have been detailed in infantry and is eligible for award of the CIB notwithstanding absence of a written directive detailing that Soldier in the infantry, provided all other requirements for the award have been met. Orders directing the officer to assume command will be confirmed in writing at the earliest practicable date.

(i) In addition, any officer, warrant officer, or enlisted Soldier whose branch is other than infantry, who under appropriate orders was assigned to advise a unit listed in paragraphs (d)(2) and (3) of this section or was assigned as a member of a White Star Mobile Training Team or a member of MAAG-Laos as indicated in paragraphs (d)(4)(i) and (ii) of this section will be eligible for award of the CIB provided all other requirements have been met.

(ii) After December 1, 1967 for service in the Republic of Vietnam, noncommissioned officers serving as Command Sergeants Major of infantry battalions and brigades for periods of at least 30 consecutive days in a combat zone are eligible for award of the CIB provided all other requirements have been met.

(2) Subsequent to March 1, 1961, a Soldier must have been—

(i) Assigned as advisor to an infantry unit, ranger unit, infantry-type unit of the civil guard of regimental or smaller size, and/or infantry-type unit of the self-defense corps unit of regimental or smaller size of the Vietnamese government during any period such unit was engaged in actual ground combat.

(ii) Assigned as advisor of an irregular force comparable to the above infantry units under similar conditions.

(iii) Personally present and under fire while serving in an assigned primary duty as a member of a tactical advisory team while the unit participated in ground combat.

(3) Subsequent to May 24, 1965, to qualify for the CIB, personnel serving in U.S. units must meet the requirements of paragraph (b)(1) of this section. Individuals who performed liaison duties with the Royal Thai Army of the Army of the Republic of Korea combat units in Vietnam are eligible for award of the badge provided they meet all other requirements.

(4) In Laos from April 19, 1961 to October 6, 1962, a Soldier must have been—

(i) Assigned as member of a White Star Mobile Training Team while the team was attached to or working with a unit of regimental (groupment mobile) or smaller size of Forces Armee du Royaume (FAR), or with irregular type forces of regimental or smaller size.

(ii) A member of MAAG-Laos assigned as an advisor to a region or zone of FAR, or while serving with irregular type forces of regimental or smaller size.

(iii) Personally under hostile fire while assigned as specified in paragraphs (d)(4)(i) and (ii) of this section.

(5) In Korea on the DMZ. The special requirements for award of the CIB for service in the Republic of Korea are rescinded. Army veterans and service members who served in Korea on or after July 28, 1953 and meet the criteria for award of the CIB outlined in paragraphs (a) and (b) of this section, may submit an application (to include supporting documentation) for award of the CIB to the Commander, USA HRC, (see § 578.3(c) for address). Retroactive awards under these criteria are not authorized for service prior to July 29, 1953.

(e) *Subsequent awards.* To date, a separate award of the CIB has been authorized for qualified soldiers in any of the following four qualifying periods:

(1) World War II (December 7, 1941 to September 3, 1945).

(2) The Korean Conflict (June 27, 1950 to July 27, 1953).

(3) *The Vietnam Conflict.* Service in the Republic of Vietnam conflict (after March 1, 1961) combined with qualifying service in Laos (April 19, 1961 to October 6, 1962); the Dominican Republic (April 28, 1965 to September 1, 1966); Korea on the DMZ (after January 4, 1969); El Salvador (January 1, 1981 to February 1, 1992); Grenada (October 23 to November 21, 1983); Joint Security Area, Panmunjom, Korea (November 23, 1984); Panama (December 20, 1989 to January 31, 1990); Southwest Asia (January 17 to April 11, 1991); and Somalia (June 5, 1992 to March 31, 1994) is recognized by one award only regardless of whether a soldier has served one or multiple tours in any or all of these areas.

(4) *Global War on Terrorism.* Operation ENDURING FREEDOM (November 20, 2001 to date to be determined) and Operation IRAQI FREEDOM (March 19, 2003 to a date to be determined).

(f) If a Soldier has been awarded the CIB in one of the qualifying periods outlined in paragraph (c) of this section, that Soldier is not eligible to earn the CMB in the same period.

(g) *Who may award.* (1) *Current awards.* Current awards of the CIB may be awarded by the Commanding General, USA HRC and any commander delegated authority by the Secretary of the Army during wartime.

(2) *Retroactive awards.* Retroactive awards of the Combat Infantryman Badge and the Combat Medical Badge may be awarded by the Commanding General, USA HRC to active duty Soldiers and Reserve Component Soldiers. Applications for retroactive award of the CIB and CMB will be forwarded through command channels to the Commander, USA HRC, (see § 578.3(c) for address). Retirees and veterans should address their application to the NPRC, (see § 578.16(a)(3) for address). Retroactive award of the CIB and CMB are authorized for time periods specified above to fully qualified individuals. Such awards will not be made except where evidence of injustice is presented.

(j) *Description.* A silver and enamel badge 1 inch in height and 3 inches in width, consisting of an infantry musket on a light blue bar with a silver border, on and over an elliptical oak wreath. Stars are added at the top of the wreath to indicate subsequent awards; one star for the second award, two stars for the third award and three stars for the fourth award.

§ 578.70 Combat Medical Badge.

(a) *Eligibility requirements.* (1) The Combat Medical Badge (CMB) may be awarded to members of the Army Medical Department (colonels and below), the Naval Medical Department (captains and below), the Air Force Medical Service (colonels and below), assigned or attached by appropriate orders to an infantry unit of brigade, regimental, or smaller size, or to a medical unit of company or smaller size, organic to an infantry unit of brigade or smaller size, during any period the infantry unit is engaged in actual ground combat on or after December 6, 1941. Battle participation credit alone is not sufficient; the infantry unit must have been in contact with the enemy.

(2) Award of the CMB will not be made to general or flag officers.

(b) The following individuals are also eligible for the CMB:

(1) Effective December 19, 1989—Special Forces personnel possessing military occupational specialty 18D (Special Operations Medical Sergeant) who satisfactorily performed medical duties while assigned or attached to a Special Forces unit during any period the unit is engaged in actual ground combat, provided they are personally present and under fire. Retroactive awards under these criteria are not authorized prior to December 19, 1989.

(2) Effective January 16, 1991—Medical personnel outlined in paragraph (a) of this section, assigned or attached to armor and ground cavalry units of brigade or smaller size, who satisfactorily perform medical duties while the unit is engaged in actual ground combat, provided they are personally present and under fire. Retroactive awards under these criteria are not authorized prior to January 16, 1991.

(3) Effective September 11, 2001, Medical personnel outlined in paragraphs (a) (1) and (b)(2) of this section, assigned or attached to or under operational control of any ground Combat Arms units (not to include members assigned or attached to Aviation units) of brigade or smaller size, who satisfactorily perform medical duties while the unit is engaged in actual ground combat, provided they are personally present and under fire. Retroactive awards under these criteria are not authorized prior to September 11, 2001.

(4) Effective on or after September 18, 2001:

(i) Medical personnel assigned or attached to or under operational control of any ground Combat Arms units (not to include members assigned or attached to Aviation units) of brigade or smaller size, who satisfactorily perform medical duties while the unit is engaged in active ground combat, provided they are personally present and under fire. Retroactive awards under these criteria are not authorized for service prior to September 18, 2001.

(ii) Effective June 5, 2005, Soldiers possessing a MOS of 18D are no longer eligible for award of the CMB (see § 578.69 (b)(5)(iii) of this part).

(c) *Subsequent awards.* The CMB is authorized for award for the following qualifying wars, conflicts, and operations:

(1) World War II (December 7, 1941 to September 3, 1945).

(2) The Korean War (June 27, 1950 to July 27, 1953).

(3) Republic of Vietnam Conflict (March 2, 1961 to March 28, 1973), combined with qualifying service in Laos (April 19, 1961 to October 6, 1962).

(4) Dominican Republic (April 28, 1965 to September 1, 1966).

(5) Korea on the DMZ (January 4, 1969 to March 31, 1994).

(6) El Salvador (January 1, 1981 to February 1, 1992).

(7) Grenada (October 23 to November 21, 1983).

(8) Joint Security Area, Panmunjom, Korea (November 23, 1984).

(9) Panama (December 20, 1989 to January 31, 1990).

(10) Southwest Asia Conflict (January 17 to April 11, 1991).

(11) Somalia (June 5, 1992 to March 31, 1994).

(12) Afghanistan (Operation ENDURING FREEDOM, December 5, 2001 to a date to be determined).

(13) Iraq (Operation IRAQI FREEDOM, March 19, 2003 to a date to be determined).

(d) The special provisions for the Vietnam Conflict, Laos and Korea on the DMZ are as follows:

(1) For service in Vietnam Conflict:

(i) On or after March 1, 1961, a Soldier must have been assigned to a Vietnamese unit engaged in actual ground combat or as a member of a U.S. Army infantry unit of brigade or smaller size, including Special Forces Detachments, serving with a Republic of Vietnam unit engaged in actual ground combat. The Republic of Vietnam unit must have been of regimental size or smaller and either an infantry, ranger, infantry-type unit of the civil guard, infantry-type unit of the self-defense corps, or the irregular forces. The Soldier must have been personally present and under hostile fire while assigned as specified.

(ii) On or after May 24, 1965, Soldiers serving in U.S. units must meet the requirements of paragraph (b) (1) of this section. Soldiers who perform liaison duties with the Royal Thai Army or the Army of the Republic of Korea combat units in Vietnam are eligible for award of the badge provided they meet all other requirements.

(2) For service in Laos, from April 19, 1961 to October 6, 1962, the Soldier must have been—

(i) Assigned as member of a White Star Mobile Training Team while the team was attached to or working with a unit of regimental (groupment mobile) or smaller size of Forces Armee du Royaume (FAR), or with irregular-type forces of regimental or smaller size.

(ii) A member of the Military Assistance Advisory Group (MAAG), Laos, assigned as an advisor to a region

or zone of FAR, or while serving with irregular-type forces of regimental or smaller size.

(iii) Personally under hostile fire while assigned as specified in paragraphs (d)(2)(i) and (ii) of this section.

(3) For service in Korea on the DMZ. The special requirements for award of the CMB for service in the Republic of Korea are rescinded. Army veterans and service members who served in Korea on or after July 28, 1953 and meet the criteria for award of the CMB outlined in paragraph (a) of this section, may submit an application (to include supporting documentation) for award of the CMB to the Commander, USA HRC, (see § 578.3(c) for address). Retroactive awards under these criteria are not authorized for service prior to July 29, 1953.

(e) Second and subsequent awards of the CMB are as follows:

(1) Second and third awards of the CMB are indicated by superimposing 1 and 2 stars respectively, centered at the top of the badge between the points of the oak wreath. To date, a separate award of the CMB has been authorized for qualified soldiers who service in the follow four qualifying periods:

(i) World War II.

(ii) The Korean War.

(iii) Vietnam Conflict. Service in the Republic of Vietnam conflict combined with qualifying service in Laos; the Dominican Republic; Korea on the DMZ; El Salvador; Grenada; Joint Security Area, Panmunjom, Korea; Panama; and Southwest Asia Conflict; and Somalia regardless of whether a Soldier has served one or multiple tours in any or all of these areas. The Vietnam Conflict Era officially terminated on March 10, 1995.

(iv) Global War on Terrorism (Afghanistan, Operation ENDURING FREEDOM) and Iraq, Operation IRAQI FREEDOM.

(2) If a Soldier has been awarded the CIB in one of the qualifying periods that Soldier is not eligible to earn the CMB in the same period.

(f) *Who may award.* The award approval authority for the CMB is the same as the CIB (see § 578.69(g) of this part).

(g) *Description.* An oxidized silver badge 1 inch in height and 1½ inches in width, consisting of a stretcher crossed by a caduceus surmounted at top by a Greek cross, all on and over an elliptical oak wreath. Stars are added to indicate subsequent awards; one star at top for the second award, one star at top and one at bottom for the third award, one star at top and one at each side for the fourth award.

§ 578.71 Combat Action Badge.

(a) On May 2, 2005, the Chief of Staff, Army, approved the creation of the Combat Action Badge (CAB) to provide special recognition to Soldiers who personally engage, or are engaged by the enemy.

(b) *Basic eligibility requirements.* The requirements for award of the CAB are Branch and MOS immaterial. Assignment to a Combat Arms unit or a unit organized to conduct close or offensive combat operations, or performing offensive combat operations is not required to qualify for the CAB. However, it is not intended to award all Soldiers who serve in a combat zone or imminent danger area.

(c) *Specific eligibility requirements.*

(1) May be awarded to any Soldier.

(2) Soldier must be performing assigned duties in an area where hostile fire pay or imminent danger pay is authorized.

(3) Soldier must be personally present and actively engaging or being engaged by the enemy, and performing satisfactorily in accordance with the prescribed rules of engagement.

(4) Soldier must be assigned or attached to a unit that would qualify the Soldier for the CIB or CMB. For example, an 11B assigned to Corps staff is eligible for award of the CAB. However, an 11B assigned to an infantry battalion is not eligible for award of the CAB.

(d) In addition to Army Soldiers, the CAB may be awarded to members of other U.S. Armed Forces and foreign military personnel assigned to a U.S. Army unit, provided they meet the criteria (for example, Korean Augmentation to U.S. Army (KATUSA) personnel in the 2d Infantry Division would be eligible).

(e) Award of the CAB is authorized from September 18, 2001, to a date to be determined. Award for qualifying service in any previous conflict is not authorized.

(f) Second and subsequent awards of the CAB are as follows:

(1) Only one CAB may be awarded during a qualified period.

(2) Second and subsequent awards of the CAB will be indicated by superimposing one and two stars respectively, centered at the top of the badge between the points of the oak wreath.

(g) Retroactive awards of the CAB are not authorized prior to September 18, 2001. For service on or after September 18, 2001, applications (with supporting documentation) for retroactive awards of the CAB will be forwarded through the first 2-star general in the chain of command to the Commander, USA HRC, (see § 578.3(c) for address).

(h) The CAB is categorized as a Group 1 Badge. See Army Regulation 670–1 for specific wear instructions.

(i) Soldier's may be awarded the CIB, CMB and CAB for the same qualifying period, provided the criteria for each badge are met. However, subsequent awards of the same badge within the same qualifying period are not authorized.

(j) The CAB may be awarded by a commander delegated authority by the Secretary of the Army during wartime or the Cdr, USA HRC. Effective June 3, 2005, commanders delegated authority to award the CAB may further delegate award authority to commanders in the grade of major general or above. The CAB will be announced in permanent orders.

(k) *Description.* A silver badge 2 inches (5.08 cm) in width overall consisting of an oak wreath supporting a rectangle bearing a bayonet surmounting a grenade, all silver. Stars are added at the top to indicate subsequent awards; one star for the second award, two stars for the third award and three stars for the fourth award.

§ 578.72 Expert Infantryman Badge.

(a) *Basic eligibility criteria.* (1) *Specialty skill identifier and Military Occupational Specialty (MOS) requirement.* Candidates must be in an Active Army status and must possess a primary MOS in CMF 11 or 18B, 18C, 18E, 18F, or 18Z; be warrant officers identified as 180A; or be infantry or special operations branch officers serving in infantry positions.

(2) *Duty requirement.* All personnel having a Career Management Field (CMF) 11 or Specialty Code 11 code, regardless of their present assignment, are eligible to participate in the Expert Infantryman Badge (EIB) program. They must meet the prerequisites and take the test with an infantry unit of at least battalion size.

(b) *Test requirement.* Personnel must meet all prerequisites and proficiency tests prescribed by U.S. Army Infantry Center.

(c) *Authority to test and award the badge.* The following commanders are authorized to give EIB tests and award the badge to qualified soldiers in their commands:

(1) Division commanders;

(2) Commanders of separate infantry brigades and regiments;

(3) Commanders of divisional brigades when authority is delegated to them by their division commanders;

(4) Separate infantry battalion commanders when authority is delegated to them by the commander exercising general court-martial authority over the battalion;

(5) Commanders of U.S. Army Training Centers;

(6) Commandant, U.S. Army Infantry School;

(7) Commanders of Special Forces Groups;

(8) Commanders of separate Special Forces battalions when authority is delegated to them by the commander exercising general court-martial authority over their units;

(9) Commanders of Reserve Component combat and training divisions, and brigade size units are authorized to administer EIB tests and award the badge to qualified personnel in the command.

(d) *Description.* A silver and enamel badge 7/16 inch in height and 3 inches in width, consisting of an Infantry musket on a light blue bar with a silver border.

§ 578.73 Expert Field Medical Badge.

(a) *Basic eligibility criteria.* (1) Officers must be assigned or detailed to an Army Medical Department (AMEDD) corps. This includes Army officers in training at the Uniformed Services University of Health Sciences. It also includes Army officers enrolled in the Health Professions Scholarship Program.

(2) Warrant officers must have an AMEDD primary MOS controlled by The Surgeon General. Warrant officer pilots are also eligible, if they have a ''D'' SQI (Aeromedical Evacuation Pilot) and are assigned to an air ambulance unit.

(3) Enlisted personnel must have a primary Military Occupational Specialty (MOS) in the Medical Career Management Field or an MOS of 18D.

(4) Other U.S. Armed Services and foreign military must either be medical personnel or serving in comparable medical positions. The approval for wear of the badge by other U.S. Armed Services and foreign military is governed according to their respective Services guidance.

(b) *Duty requirement.* Eligible personnel must be on active duty or assigned to a troop program unit in the Reserve component unit or an AMEDD mobilization augmentation agency.

(c) *Authority to test and award.* The following commanders in the grade of Lieutenant Colonel or above are authorized to conduct the test and award the badge. Commanders must have the resources and facilities to conduct the test as prescribed by the U.S. Army Medical Department Center and School.

(1) Active Army Table of Organization and Equipment (TOE) and Table of Distribution and Allowances (TDA) medical units.

(2) Division support commands.

(3) Separate regiments and brigades.

(4) Commanders of U.S. Army Reserve and National Guard units. Reserve and National Guard units must conduct the test during their annual active duty training.

(d) *Description.* An oxidized silver badge 15/16 inch in height and 1 7/16 inches in width consisting of a stretcher crossed by a caduceus surmounted at top by a Greek cross.

§ 578.74 Parachutist badges.

(a) Three degrees of badges are authorized for award: Basic Parachutist Badge, Senior Parachutist Badge, and Master Parachutist Badge.

(b) Eligibility criteria for each badge as set forth in Parachutist Badge—Basic, Senior Parachutist Badge, and Master Parachutist Badge.

(c) Special eligibility for awards will be determined from the DA Form 1307 (Individual Jump Record) in their military record. Each entry on this form will include pay period covered and initials of the personnel officer; the entry will be made only from a DA Form 1306 (Statement of Jump and Loading Manifest) completed by an officer or jumpmaster.

(d) Jumps with civilian parachute clubs will not be counted in the number of total jumps required for each badge.

(e) Award of the basic Parachutist Badge or advanced parachutist badges awarded by other U.S. Services may only be awarded if the soldier meets the Army criteria for the badge.

(f) *Approval authority.* Award approval authorities for all three badges are as follows:

(1) Commanding Generals of major Army commands (MACOM) and continental United States (CONUS);

(2) Commanders of U.S. Army Corps with organic long-range reconnaissance companies, commanders of airborne corps, airborne divisions;

(3) Commander, 4th Psychological Operations Group (Airborne);

(4) Infantry divisions containing organic airborne elements;

(5) Commandants of the Infantry School and the Quartermaster School;

(6) Commanders of separate airborne regiments, separate airborne battalions, Special Forces Group (Airborne), and the U.S. Army John F. Kennedy Special Warfare Center and School;

(7) The President, U.S. Army Airborne, Communications and Electronics Board;

(8) Commander, U.S. Army Special Forces Command (Airborne);

(9) Commander, U.S. Army Special Operations Support Command (Airborne).

(g) *Subsequent awards.* A bronze service star is authorized to be worn on the Parachutist Badges to denote a soldier's participation in a combat parachute jump. Orders are required to confirm award of these badges. A soldier's combat parachute jump credit is tied directly to the combat assault credit decision for the unit to which the soldier is attached or assigned at the time of the assault. Should a unit be denied air assault credit, no air assault credit for purpose of this badge will accrue to the individual soldiers of that unit. Each soldier must physically exit the aircraft to receive combat parachute jump credit and the Parachutist badge with bronze service star.

(h) *Description.* An oxidized silver badge 1 13/64 inches in height and 1½ inches in width, consisting of an open parachute on and over a pair of stylized wings displayed and curving inward. A star and wreath are added above the parachute canopy to indicate the degree of qualification. A star above the canopy indicates a Senior Parachutist; the star surrounded by a laurel wreath indicates a Master Parachutist. Small stars are superimposed on the appropriate badge to indicate combat jumps as follows:

(1) *One jump:* A bronze star centered on the shroud lines 3/16 inch below the canopy;

(2) *Two jumps:* A bronze star on the base of each wing;

(3) *Three jumps:* A bronze star on the base of each wing and one star centered on the shroud lines 3/16 inch below the canopy;

(4) *Four jumps:* Two bronze stars on the base of each wing;

(5) *Five jumps:* A gold star centered on the shroud lines 5/16 inch below the canopy.

§ 578.75 Parachutist Badge—Basic.

General. To be eligible for award of the basic Parachutist Badge, an individual must have satisfactorily completed the prescribed proficiency tests while assigned or attached to an airborne unit or the Airborne Department of the Infantry School, or have participated in at least one combat parachute jump as follows:

(a) A member of an organized force carrying out an assigned tactical mission for which the unit was credited with an airborne assault landing by the theater commander;

(b) While engaged in military operations involving conflict with an opposing foreign force;

(c) While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

§ 578.76 Senior Parachutist Badge.

To be eligible for the Senior Parachutist Badge, an individual must have been rated excellent in character and efficiency and have met the following requirements:

(a) Participated in a minimum of 30 jumps to include the following:

(1) Fifteen jumps with combat equipment to consist of normal TOE equipment including individual weapon carried in combat whether the jump was in actual or simulated combat. In cases of simulated combat the equipment will include water, rations (actual or dummy), ammunition (actual or dummy), and other essential items necessary to sustain an individual in combat.

(2) Two night jumps made during the hours of darkness (regardless of time of day with respect to sunset) one of which will be as jumpmaster of a stick.

(3) Two mass tactical jumps which culminate in an airborne assault problem with either a unit equivalent to a battalion or larger; a separate company battery; or an organic staff of regimental size or larger. The soldier must fill a position commensurate with his or her rank or grade during the problem.

(4) For award of the Senior Parachutist Badge, the prerequisite requirements above must be obtained by static line parachuting.

(b) Either graduated from the Jumpmaster Course of the Airborne Department of the Infantry School or the Jumpmaster School of a separate airborne battalion or larger airborne unit, or infantry divisions and separate infantry brigades containing organic airborne elements, to include the U.S. Army Alaska Jumpmaster Course or served as jumpmaster on one or more combat jumps or as a jumpmaster on 15 noncombat jumps.

(c) Have served on jump status with an airborne unit or other organizations authorized parachutists for a total of at least 24 months.

§ 578.77 Master Parachutist Badge.

To be eligible for the Master Parachutist Badge, an individual must have been rated excellent in character and efficiency and have met the following requirements:

(a) Participated in a minimum of 65 jumps to include: (1) Twenty-five jumps with combat equipment to consist of normal TOE equipment, including individual weapon carried by the individual in combat whether the jump was in actual or simulated combat. In cases of simulated combat the equipment will include water rations (actual or dummy), ammunition (actual or dummy), and other essential items necessary to sustain an individual in combat.

(2) Four night jumps made during the hours of darkness (regardless of the time of day with respect to sunset) one of which will be as jumpmaster of a stick.

(3) Five mass tactical jumps which culminate in an airborne assault problem with a unit equivalent to a battalion or larger; a separate company/battery; or an organic staff of regimental size or larger. The individual must fill a position commensurate with their rank or grade during the problem.

(4) For award of the Master Parachutist Badge, the prerequisite requirements in paragraphs (a)(1), (2) and (3) of this section must be obtained by static line parachuting.

(b) Either graduated from the Jumpmaster Course of the Airborne Department of the Infantry School or the Jumpmaster School of a separate airborne battalion or larger airborne unit, or infantry divisions and separate infantry brigades containing organic airborne elements, to include the U.S. Army Alaska Jumpmaster Course, or served as jumpmaster on one or more combat jumps or as jumpmaster on 33 noncombat jumps.

(c) Have served on jump status with an airborne unit or other organization authorized parachutists for a total of at least 36 months.

§ 578.78 Parachute Rigger Badge.

(a) *Eligibility requirements.* Any individual who successfully completes the Parachute Rigger course conducted by the U.S. Army Quartermaster School and holds an awarded MOS of 43E (enlisted) or 401A (warrant officers) may be awarded the Parachute Rigger Badge. Officers qualify upon successful completion of one of the following courses: Aerial Delivery and Materiel Officer Course; Parachute Maintenance and Aerial Supply Officer Course; Parachute Maintenance and Airdrop Course (officer or enlisted) or Parachute Rigger Course (enlisted). Sergeants Major and Master Sergeants who hold by career progression a MOS of 00Z or 76Z and formerly held an awarded MOS of 43E are qualified for award of the Parachute Rigger Badge.

(b) *Retroactive award.* The Parachute Rigger Badge may be awarded retroactively to any individual who graduated from the Parachute Rigger school after May 1951 and holds or at anytime held an awarded MOS listed in paragraph (a) of this section. Officers must have successfully completed one of the courses listed in paragraph (a) of this section to qualify for retroactive award of the badge. The badge may also be awarded retroactively to any individual who performed as a rigger prior to May 1951 and did not attend or graduate from the U.S. Army Quartermaster Center and School.

(c) *Who may award.* (1) *Current awards.* Current awards of the Parachute Rigger Badge will be made by the Commandant, U.S. Army Quartermaster School, Fort Lee, VA 23801–5152, and the Commander, USA HRC (§ 578.3 (c) for address).

(2) *Retroactive awards.* (i) *After 1951.* Requests for award of the badge from individuals having no current Army status (veterans and retirees) who qualified after 1951 will be forwarded to the NPRC (see § 578.16 (a)(3) for address).

(ii) *Before 1951.* Requests for award of the badge from individuals (Active duty, veterans and retirees) who qualified before 1951 will be submitted to the Commandant, U.S. Army Quartermaster Center and School, ATTN: ATSM–Q–MG (Historian), Fort Lee, VA 23801–1601. Requests must include written justification and will be considered on a case-by-cases basis.

(d) *Description.* A silver winged hemispherical canopy with conically arrayed cords, 1¾ inches wide, with a band centered on the badge inscribed ''RIGGER.''

§ 578.79 Military Free Fall Parachutist Badge.

(a) The Military Free Fall Parachutist Badges identify Special Operations Forces (SOF) personnel who have qualified in one of the military's most demanding and hazardous skills, military free fall parachuting.

(b) *Badge authorized.* Two degrees of the Military Free Fall Parachutist Badges are authorized for award: Basic and Jumpmaster.

(c) *Eligibility requirements.* (1) Military Free Fall Parachutist Badge, Basic. To be eligible for the basic badge, an individual must meet one of the following criteria:

(i) Have satisfactorily completed a prescribed program of instruction in military free fall approved by the U.S. Army John F. Kennedy Special Warfare Center and School (USAJFKSWC&S); or

(ii) Have executed a military free fall combat jump.

(2) Military Free Fall Parachutist Badge, Jumpmaster. To be eligible for the Jumpmaster Badge, an individual must have satisfactorily completed a prescribed military free fall jumpmaster

program of instruction approved by USAJFKSWC&S.

(d) *Approval authority.* (1) The Commander in Chief, U.S. Special Operations Command is the approval authority for award of these badges.

(2) The Commanding General, USAJFKSWC&S is the approval authority for award of the badges to qualifying personnel upon their graduation from USAJFFKSWC&S Military Free Fall Parachutist basic and Military Free Fall Parachutist Jumpmaster courses.

(3) *Retroactive Award.* Special Operations Forces personnel who qualified in military free fall prior to October 1, 1994 must obtain approval prior to wearing the Military Free Fall Parachutist Badges. Requests for award of the badge will be submitted in writing to Commander, U.S. Army John F. Kennedy Special Warfare Center and School, ATTN: AFJK–GPD–SA, Fort Bragg, NC 28307–5000. Applications will include the following:

(i) Name, rank, SSN, and MOS;

(ii) Copy of official jump record, DA Form 1307 (Individual Jump Record), and any other supporting documents (that is, graduation or qualification certificates).

(4) *Veterans and Retirees.* Veterans and retirees may request update of their records to show permanent award of the badge by writing to the NPRC (§ 578.16 (a)(3) for address). Requests should include copy of official jump record, DA Form 1307 (Individual Jump Record), and any other support documents (that is, graduation or qualification certificates).

(e) A bronze service star is authorized to be worn on all degrees of the Military Free Fall Parachutist Badge to denote a soldier's participation in a combat parachute jump. Orders are required to confirm award of this badge. A soldier's combat parachute jump credit is tied directly to the combat assault landing credit decision for the unit to which the soldier is assigned or attached at the time of the assault landing. Should a unit be denied air assault credit, no air assault credit for purpose of this badge will accrue to the individual soldiers of that unit. Each soldier must physically exit the aircraft to receive combat parachute jump credit and the Military Free Fall Parachutist badge with bronze service star.

§ 578.80 Army Aviator Badges.

(a) *Badges authorized.* There are three degrees of the aviator badges authorized for award. They are as follows: Basic Army Aviator Badge, Senior Army Aviator Badge, and Master Army Aviator Badge.

(b) *Eligibility Requirements.* (1) Eligibility for U.S. Personnel. An individual must have satisfactorily completed prescribed training and proficiency tests as outlined in AR 600–105, and must have been designated as an aviator in orders issued by headquarters indicated above.

(2) Eligibility for foreign military personnel. While only U.S. officers may be awarded an aeronautical rating, the Army Aviator Badge may be awarded to foreign military graduates of initial entry flight-training courses conducted at the U.S. Army Aviation Center. The Senior and Master Army Aviator Badges may be awarded to foreign military personnel rated as pilots who meet or exceed eligibility criteria required of U.S. Army officers for the respective badges, and subject to the regulations of their countries. As a minimum, foreign officers recommended for award of advanced aviator badges must—

(i) Be currently qualified for flying duty in their own military service.

(ii) Be medically qualified.

(iii) If not a graduate of an initial entry U.S. Army aviation course, have attended a formal training or aircraft transition course conducted at Fort Rucker or at an U.S. Army Aviation Training School.

(iv) Have 1000 flying hours in aircraft and 7 years from basic rating date for the Senior Aviator Badge; have 2000 hours in aircraft and 15 years from basic rating date for the Master Aviator Badge. Total Operational Flying Duty Credit (TOFDC) which may be applied by U.S. officers to qualify for advanced badges will not be used to justify awards to foreign officers.

(c) *Approval authority.* Badge approval authority is as follows: (1) The Commander, U.S. Army Aviation Center and Fort Rucker, to U.S. student aviators upon successful completion of courses leading to an aeronautical rating of Army Aviator, and to foreign military personnel under the provisions of paragraph (d) of this section.

(2) CG, USA HRC (HRC–OPA–V) to inter-service transfers who previously held an aeronautical rating in another service.

(3) Commanders having general court-martial convening authority may award the Senior or Master Army Aviator Badge to officers on extended active duty.

(4) Major Army overseas commanders, CONUSA (the numbered armies in the continental United States) commanders, and CDR, USA HRC may award the Senior and Master Aviator Badge to U.S. Army Reserve personnel not on extended active duty in the Active Army.

(5) Chief, National Guard Bureau may award the Senior or Master Aviator Badge to Army National Guard (ARNG) personnel not on extended active duty in the Active Army.

(d) *Army Astronaut Device.* A gold colored device, 7/16-inches in length, consisting of a star emitting three contrails encircled by an elliptical orbit. It is awarded by the Chief of Staff, Army, to personnel who complete a minimum of one operational mission in space (50 miles above earth) and is affixed to the appropriate Army Aviator Badge, Flight Surgeon Badge, or Aviation Badge awarded to the astronaut. Individuals who have not been awarded one of the badges listed above but who meet the other astronaut criteria will be awarded the basic Aviation Badge with Army Astronaut Device.

(e) *Description.* An oxidized silver badge ¾ inch in height and 2½ inches in width, consisting of the shield of the coat of arms of the United States on and over a pair of displayed wings. A star is added above the shield to indicate qualification as a Senior Army Aviator. The star is surrounded with a laurel wreath to indicate qualification as a Master Army Aviator.

§ 578.81 Flight Surgeon Badges.

(a) *Badges authorized.* Three levels of Flight Surgeon Badges are authorized for award, Basic Flight Surgeon Badge; Senior Flight Surgeon Badge; and Master Flight Surgeon Badge.

(b) *Eligibility requirements.* Any Army Medical Corps officer who satisfactorily completes the training and other requirements prescribed by AR 600–105.

(c) *Badge approval authority.* (1) The basic Flight Surgeon Badge may be awarded by the Commanding General, U.S. Army Aviation Center and Fort Rucker. The CG will award the badge to those U.S. medical officers who have been awarded an aeronautical designation per AR 600–105 and to foreign military personnel who complete the training and the requirements prescribed by AR 600–105.

(2) Senior and Master Flight Surgeon Badges may be awarded by the following:

(i) The Surgeon General. Forward requests to HQDA (DASG–HCZ, WASH DC 20310–2300.

(ii) The Chief, National Guard Bureau to National Guard personnel not on active duty. Forward requests to the National Guard Bureau, Military Personnel Office, 111 South George Mason Drive, Arlington, VA 22204–1382.

(d) *Description.* An oxidized silver badge 23/32 inch in height and 2½ inches in width, consisting of a shield, its field scored with horizontal lines and bearing the Staff of Aesculapius on and over a pair of displayed wings. A star is added above the shield to indicate the degree of Senior Flight Surgeon and the star is surrounded with a laurel wreath to indicate the degree of Master Flight Surgeon.

§ 578.82 Diver Badge.

(a) *Badges authorized.* There are five types of Diver Badges authorized for award, Master Diver Badge; First-Class Diver Badge; Salvage Diver Badge; Second-Class Diver Badge; and Scuba Diver Badge.

(b) *Navy Badges.* The following Navy Diving Badges may also be worn on the Army uniform after written approval is obtained from HQ, AHRC (§ 578.3(c)): Diving Officer and Diving Medical Officer. The eligibility criteria and approval authority for these two badges is provided in Army Regulation AR 611–75, Selection, Qualification, Rating and Disrating of Marine Divers.

(c) *Eligibility requirements.* See AR 611–75.

(d) *Badge approval authority.* See AR 611–75.

(e) *Descriptions.* (1) Scuba—A 1 inch high silver badge consisting of a scuba diver's hood with face mask, mouthpiece, and breathing tubes. The width is 31/32 inch.

(2) Salvage—A silver diving helmet, 1 inch in height, with the letter ''S'' ⅜ inch in height, superimposed on the chest plate. The width is 23/32 inch.

(3) Second Class—A silver diving helmet 1 inch in height. The width is 23/32 inch.

(4) First Class—A silver diving helmet 15/16 inch in height, between two dolphins, 1 inch high. The width is 1 3/32 inches.

§ 578.83 Special Operations Diver Badge.

(a) The Scuba Diver Badge was renamed the Special Operations Diver Badge (SODB). In addition to the SODB, another skill level was created, Special Operations Diving Supervisor Badge (SODSB).

(b) *Eligibility criteria.* The basic eligibility criteria for award of the SODB and the SODSB are as follows:

(1) The SODB is awarded to graduates of the U.S. Army John F. Kennedy Special Warfare Center and School (USAJFKSWCS) Combat Diver Qualification Course (CDQC), Special Forces Underwater Operations, Key West, Florida or any other United States Army Special Operations Command (USASOC) approved combat diver qualification course.

(2) The SODSB is awarded to graduates of the USAJFKSWCS CDQC, Special Forces Underwater Operations, Key West, Florida or any other USASOC approved combat diving supervisor course. Prerequisite for the SODSB is the SODB.

(c) *Approval authority.* The Commanding General, USAJFKSWCS is the approval authority for the SODB and the SODSB.

(d) *Retroactive award.* The SODB and the SODSB may be awarded retroactively to members of any service who successfully completed the USAJFKSWCS CDQC and the Combat Diving Supervisor Course on or after October 1, 1964. Retroactive award requests will be submitted to the Commander, USAJFKSWCS, ATTN: AOJK–GPB (C/21 SWTG LNO), Fort Bragg, NC 28310. Retroactive requests for veterans must be forwarded to the National Personnel Records Center, ATTN: NRPMA–M, 9700 Page Avenue, St. Louis, MO 63132–5100.

(e) *Revocation.* The SODB and the SODSB may be revoked by the Commander, USAJFKSWCS or the CG, USA HRC, based on the recommendation of the field commander (COL and above). If the commander believes the individual has exhibited a pattern of behavior or duty performance that is inconsistent with expectations of the Army, or the qualified service member does not continuously demonstrate enhanced degrees of confidence, commitment, competency and discipline, then the badge may be revoked. Award of the SODB and the SODSB may be revoked for any of the following conditions:

(1) Dismissal, dishonorable discharge, or conviction by courts-martial for desertion in time of war.

(2) Failure to maintain prescribed standards of personal fitness and readiness to accomplish missions commensurate with position and rank.

(3) Upon relief or release for cause.

(f) *Description.* (1) SODB. A silver badge 1⅛ inches (2.86cm) in height consisting of a diver's head in full gear in front of two crossed Sykes-Fairbain Commando daggers points up. Around either side of the diver's head is diving shark with tail fin behind the dagger point.

(2) SODSB. A silver badge 1⅛ inches (2.86cm) in height consisting of a diver's head in full gear in front of two crossed Sykes-Fairbain Commando daggers points up. Around either side of the diver's head a diving shark with tail fin behind the dagger point. Over the mouth piece is a star surrounded by a wreath of laurel.

§ 578.84 Explosive Ordnance Disposal Badge.

(a) *Badges authorized.* There are three types of explosive ordnance disposal (EOD) badges authorized for award. They are the Basic, Senior, and Master.

(b) *Badge approval authority.* Commanding generals of divisions and higher commands; commanders of separate groups or equivalent headquarters exercising operational control of EOD personnel or units, Commandant, U.S. Army Ordnance Missile & Munitions Center & School, and a commander of an EOD Control Group, or units may approve awards of all levels of badges.

(c) *Basic eligibility criteria.* Eligibility requirements for each badge are provided below.

(d) *Description.* A silver badge, 1¾ inches in height, consisting of shield charged with a conventional, drop bomb, point down, from which radiates four lightning flashes, all in front of and contained within a wreath of laurel leaves. The Senior Explosive Ordnance Disposal Badge is the same as the basic badge except the drop bomb bears a 7/32 inch silver star. The Master Explosive Ordnance Disposal Badge is the same as the Senior Badge except a star, surrounded by a laurel wreath, is added above the shield.

§ 578.85 Explosive Ordnance Disposal Badge—Basic.

(a) *Eligibility requirements.* Any commissioned officer or enlisted soldier may be awarded the badge if he or she meets, or has met, all the following requirements: (1) Successful completion of conventional render safe qualification as prescribed for the Explosive Ordnance Disposal (EOD) course of instruction (minimum requirement).

(2) Assigned in a TOE or TDA EOD position for which basic EOD course is a prerequisite.

(3) Service in a position in paragraph (a)(2) of this section must be satisfactory for a period of 18 months for the award to be permanent.

(4) Officers must have a special skill identifier of 91E, and enlisted personnel must hold the military occupational specialty 55D.

(b) *Who may award.* See § 578.84 of this part.

§ 578.86 Senior Explosive Ordnance Disposal Badge.

(a) *Eligibility requirements.* Any commissioned officer or enlisted soldier may be awarded the badge if he or she has:

(1) Been awarded the basic Explosive Ordnance Disposal Badge and effective May 1, 1989, has served 36 months

cumulative service assigned to a TOE or table of distribution (TD) EOD position following award of basic badge.

(2) Effective May 1, 1989, has served 36 months cumulative service assigned to a TOE or TD EOD position following award of the basic badge. Prior to May 1, 1989, must have served 18 months cumulative service assigned to a TOE or TD EOD position following award of the basic badge.

(3) Been recommended for the award by immediate commander.

(4) Current explosive ordnance disposal qualifications at the time of recommendation for the award.

(b) *Who may award.* See § 578.84 of this part.

§ 578.87 Master Explosive Ordnance Disposal Badge.

(a) *Eligibility requirements.* Any commissioned officer, or enlisted soldier may be awarded the badge if he or she meets, or has met, all the following requirements:

(1) Must have been awarded the Senior Explosive Ordnance Disposal Badge.

(2) Sixty months cumulative service assigned to a TOE or TD officer or noncommissioned officer EOD position since award of Senior Explosive Ordnance Disposal Badge.

(3) Must be recommended for the award by immediate commander.

(4) Explosive ordnance disposal qualifications must be current at the time of recommendation for the award.

(b) *Who may award.* See § 578.84 of this part.

§ 578.88 Pathfinder Badge.

(a) *Eligibility criteria.* (1) Successful completion of the Pathfinder Course conducted by the U.S. Army Infantry School.

(2) Any person previously awarded the Pathfinder award for completion of Pathfinder training is authorized award of the Pathfinder Badge.

(b) *Badge approval authority.* The Pathfinder Badge may be approved by the Commandant, U.S. Army Infantry School.

(c) *Description.* A gold color metal and enamel badge 1 3/16 inches in height and 1 1/2 inches in width, consisting of a gold sinister wing displayed on and over a gold torch with red and gray flames.

§ 578.89 Air Assault Badge.

(a) *Basic eligibility criteria.* The basic eligibility criteria consist of satisfactory completion of—

(1) An air assault training course according to the TRADOC standardized Air Assault Core Program of Instruction.

(2) The standard Air Assault Course while assigned or attached to 101st Airborne Division (Air Assault) since April 1, 1974.

(b) *Badge approval authority.* Badge approval authority is as follows:

(1) Commanders of divisions and separate brigades.

(2) The Commander, 101st Airborne Division (Air Assault).

(c) *Description.* An oxidized silver badge 3/4 inch in height and 1 17/32 inches in width, consisting of a helicopter, frontal view, superimposed upon a pair of stylized wings displayed and curving. The wings suggest flight and together with the helicopter symbolize individual skills and qualifications in assault landings utilizing the helicopter.

§ 578.90 Aviation Badge.

(a) *Badges authorized.* There are three degrees of Aviation Badge (formerly the Aircraft Crew Member Badge) authorized for award, Basic, Senior and Master.

(b) *Badge approval authority.* Commanders exercising jurisdiction over the individuals' personnel records will make permanent award of these badges. Permanent award of these badges based upon wounds or combat missions will be referred to Commander, USA HRC (see § 578.3 (c) for address). Request for award of the Senior and Master Aviation Badges that cannot be resolved at the MPD/PSC will be forwarded to the Commander, U.S. Army Aviation Center, ATTN: ATZQ–AP, Fort Rucker, AL 36362–5000.

(c) *Special policy.* (1) The retroactive date for these badges is January 1, 1947.

(2) The Master Aviation Badge and the Senior Aviation Badge are authorized for permanent wear. The Basic Aviation Badge may be authorized for temporary or permanent wear. An officer awarded an Aviation Badge while serving in an enlisted status is authorized to wear the badge as a permanent part of the uniform.

(d) Eligibility requirements for each badge are provided in §§ 578.91, 578.92, and 578.93.

(e) Description. An oxidized silver badge 3/4 inch in height and 2 2/12 inches in width, consisting of a shield with its field scored with horizontal lines and bearing the coat of arms of the United States on and over a pair of displayed wings. A star is added above the shield to indicate the degree of Senior Aviation Badge and the star is surrounded with a laurel wreath to indicate the degree of Master Aviation Badge.

§ 578.91 Aviation Badge—Basic.

(a) *Permanent Award.* (1) For permanent award of this badge, an individual must be on flying status, (physically qualified-class III), IAW AR 600–106 or be waived by HQDA, have performed in-flight duties for not less than 12 hours (not necessarily consecutive), or is school trained.

(2) An officer on flying status as an aerial observer may be awarded the Basic Aviation Badge. U.S. Army personnel assigned to a Joint Service Airborne Command Post and serving as members of an operational team on flying status manning the Airborne Command Post are eligible for the award of the Basic Aviation Badge. Concurrent with such assignment, these personnel are authorized temporary wear of the Basic Aviation Badge until relieved from such duty or until such time as he or she fulfills the mandatory requirements for permanent award.

(3) An individual who has been incapacitated for further flight duty by reason of being wounded as a result of enemy action, or injured as the result of an aircraft accident for which he or she was not personally responsible, or has participated in at least 15 combat missions under probable exposure to enemy fire while serving in a principal duty outlined in paragraph (a)(1) of this section, is permanently authorized to wear the Basic Aviation Badge.

(4) The Basic Aviation Badge may be permanently awarded to soldiers upon successful completion of formal advanced individual training (AIT) in Career Management Field (CMF) 67 and CMF 93 MOS', and to soldiers who previously completed AIT in CMF 28 MOS'. This includes soldiers who graduated from AIT for MOS' in the 68 series. Soldiers holding MOS' 35L, 35M, 35Q, and 35W who graduated from a CMF 67 AIT prior to September 30, 1996 and MOSs 93C and 93P who graduated from a CMF 67 AIT after December 31, 1985 are authorized based on documented prior AIT.

(5) Individuals who meet the criteria for award of the Army Astronaut Device and are not authorized an Aviator, Flight Surgeon or Aviation Badge will be awarded the Aviation Badge in addition to the Army Astronaut Device.

(6) The Aviation Badge may be permanently awarded to soldiers upon successful completion of formal AIT in CMF 93 MOS'. Soldiers previously holding MOS 93B who graduated from a CMF 93 AIT prior to January 1, 1998 and soldiers previously holding MOS 93D who graduated from a CMF 93 AIT prior to September 30, 1996 are authorized the badge based on documented AIT after December 31, 1985.

(b) *Temporary Award.* For temporary award of this badge, the commander of

any Army unit that has Army aircraft assigned may authorize in published orders qualified personnel of his or her command to wear the Aviation Badge. The individual must be performing in-flight duties.

§ 578.92 Senior Aviation Badge.

(a) *Eligibility criteria.* For award of this badge, an individual must either successfully perform 7 years on flight status (physically qualified-class III) in a principal duty assignment described in AR 600–106 or serve in CMF 67 and 93, including all 68 series MOS'. Warrant Officers MOS' 150A and 151A, and MOS 00Z individuals from CMF 67 or 93 field may qualify for the Senior Aviation Badge with 10 years of experience and meet the following criteria:

(1) Only time involving frequent and regular flights will be counted toward fulfillment of this requirement, except that time involved in transit between PCS assignments to include TDY, will also be credited.

(2) Soldiers who retain CMF 67 or 93 while performing career progressive assignments, especially duties as Drill Sergeant, Recruiter, Career Management NCO, Career Advisor, Instructor or Equal Opportunity Advisor will be counted towards this requirement not to exceed 36 months. Warrant Officers MOS 150A or 151A may qualify for this badge after successfully performing 7 years on flight status or 10 years experience in CMF 67 or 93, MOS 151A or 150A. Prior enlisted CMF 67 time may count with MOS 151A experience and CMF 93 time may count with MOS 150A experience to fulfill this requirement. The retroactive date for this badge under these criteria is January 1, 1983.

(3) Displayed complete competence in the principal duty or duties performed leading to this award.

(4) Attained the grade of E–4 or higher.

(5) Be recommended by the unit commander of the unit to which presently assigned.

(b) *Retroactive award.* The retroactive date for award of this badge is February 1, 1989 for CMF 93, Warrant Officer MOS' 150A and 151A and individuals in MOS 00Z. Soldiers holding CMF 93 or MOS 93D, prior to September 30, 1996 and MOS 93B prior to January 1, 1998, may qualify for award of the Senior Aviation Badge based on documented experience.

§ 578.93 Master Aviation Badge.

(a) For award of this badge, an individual must either successfully perform 15 years on flight status (physically qualified-class III) in a principal duty assignment described in AR 600–106 or serve in CMF 67 or 93, including all 68 series MOS'. Warrant Officers MOS' 150A and 151A and individuals in MOS 00Z from a CMF 67 or 93 field, may qualify for the Master Aviation Badge with 17 years of experience and meet the following criteria:

(1) Only time involving frequent and regular flights will be counted toward fulfillment of this requirement, except that time involved in transit between PCS assignments, to include TDY, will also be credited.

(2) Soldiers that retain CMF 67 or 93 while performing career progressive assignments, especially duties as Drill Sergeant, Recruiter, Career Management NCO, Career Advisor, Instructor or Equal Opportunity Advisor, will be counted towards this requirement not to exceed 36 months. Warrant Officer MOS' 150A and 151A may qualify for this badge after successfully performing 15 years on flight status or 17 years experience in CMF 67 or 93 or MOS 150A and 151A. Prior enlisted CMF 67 time may count with MOS 151A experience and CMF 93 time may count with MOS 150A experience to fulfill this requirement.

(3) Displayed complete competence in the principal duty or duties performed leading to this award.

(4) Attained the grade of E–6 or higher.

(5) Be recommended by the unit commander and endorsed by the next higher commander of the unit to which presently assigned.

(b) *Retroactive date.* The retroactive date for the badge under these revised criteria is January 1, 1976. The retroactive date for CMF 93, Warrant Officer MOS' 150A and 151A and individuals in MOS 00Z is February 1, 1982. Soldiers holding CMF 93, MOS 93D, prior to September 30, 1996 and MOS 93B, prior to January 1, 1998, may qualify for award of the Master Aviation Badge based on documented experience.

§ 578.94 Driver and Mechanic Badge.

(a) *Basic criteria.* The Driver and Mechanic Badge is awarded to drivers, mechanics, and special equipment operators to denote the attainment of a high degree of skill in the operation and maintenance of motor vehicles.

(b) *Badge approval authority.* Commanders of brigades, regiments, separate battalions, and any commander in the rank of lieutenant colonel or higher.

(c) *Eligibility requirements for drivers.* A soldier must—

(1) Qualify for and possess a current OF 346 (U.S. Government Motor Vehicles Operator's Identification Card), issued as prescribed by AR 600–55 and,

(2) Be assigned duties and responsibilities as a driver or assistant driver of government vehicles for a minimum of 12 consecutive months, or during at least 8,000 miles and with no government motor vehicle accident or traffic violation recorded on his or her DA Form 348–1–R (Equipment Operator's Qualification Record (Except Aircraft)), or,

(3) Perform satisfactorily for a minimum period of 1 year as an active qualified driver instructor or motor vehicle driver examiner.

(d) *Eligibility requirements for mechanics.* A soldier must—

(1) Pass aptitude tests and complete the standard mechanics' course with a ''skilled'' rating or have demonstrated possession of sufficient previous experience as an automotive or engineer equipment mechanic to justify such a rating.

(2) Be assigned to primary duty as an automotive or engineer mechanic, unit level or higher, or is an active automotive or engineer mechanic instructor.

(3) If required to drive an Army motor vehicle in connection with automotive mechanic or automotive mechanic instructor duties, qualify for motor vehicle operators permit as prescribed above, and perform duty which includes driving motor vehicles for a minimum of 6 consecutive months, and has no Army motor vehicle accident or traffic violation recorded on his or her DA Form 348 (Equipment Operator's Qualification Record (Except Aircraft)).

(e) *Eligibility requirements for operators of special mechanical equipment.* A soldier or civilian whose primary duty involves operation of Army materials handling or other mechanical equipment must have completed 12 consecutive months or 500 hours of operation, whichever comes later, without accident or written reprimand as the result of his or her operation, and his or her operating performance must have been adequate in all respects.

(f) *Description.* A white metal (silver, nickel and rhodium), 1 inch in height and width, a cross patee with the representation of disk wheel with tire placed on the center. Component bars are authorized only for the following types of vehicles and/or qualifications:

(1) Driver—W (for wheeled vehicles);

(2) Driver—T (for tracked vehicles);

(3) Driver—M (for motorcycles);

(4) Driver—A (for amphibious vehicles);

(5) Mechanic (for automotive or allied vehicles);

(6) Operator—S (for special mechanical equipment).

§ 578.95 Glider Badge (Rescinded).

(a) Effective May 3, 1961, the Glider Badge is no longer awarded. An individual who was awarded the badge upon satisfying then current eligibility requirements may continue to wear the badge. Further, it may be awarded retroactively upon application to the Commander, USA HRC (see § 578.3 (c) for address), when it can be established by means of sufficient documentation that the proficiency tests then prescribed were satisfactorily completed while assigned or attached to an airborne unit or to the Airborne Department of the Infantry School, or by participation in at least one combat glider landing into enemy-held territory as a member of an organized force carrying out an assigned tactical mission for which the unit was credited with an airborne assault landing by the theater commander.

(b) *Description.* An oxidized silver badge 11/16 inch in height and 1½ inches in width consisting of a glider, frontal view, superimposed upon a pair of stylized wings displayed and curving inward.

§ 578.96 Nuclear Reactor Operator Badge (Rescinded).

(a) Effective October 1, 1990, the Nuclear Reactor Operator Badges are no longer awarded. The Army has not conducted nuclear reactor operations or nuclear reactor operator training in several years. Accordingly, the Nuclear Reactor Operator Badges will no longer be awarded. Current Army recipients who were permanently awarded any degree of the badge may continue to wear it on the Army uniform. AR 672–5–1, dated October 1, 1990, terminated authorization to award the badge.

(b) *Description.* (1) *Basic.* On a 7/8 inch square centered on two horizontal bars each 1/8 inch in width separated by a 3/32 inch square and protruding 1/8 inch from each side of the square, a disc 3/4 inch in diameter bearing the symbol of the planet Uranus all silver colored metal 7/8 inch in height overall.

(2) *Second Class Operator.* The basic badge reduced in size placed on and partially encircled at the base by an open laurel wreath, the ends of the upper bar resting on the tips of the wreath, all of silver colored metal 1 inch in height overall. The areas between the wreath and the basic badge are pierced.

(3) *First Class Operator.* The basic badge reduced in size is placed on and entirely encircled by a closed laurel wreath all of silver colored metal 1 inch in height overall. The areas between the wreath and the basic badge are pierced.

(4) *Shift Supervisor.* The design of the Shift Supervisor Badge is the same as the First Class Operator Badge, except it is gold colored metal.

§ 578.97 Marksmanship Qualification Badge.

(a) *Eligibility criteria.* A basic marksmanship qualification badge is awarded to indicate the degree in which an individual, military or civilian, has qualified in a prescribed record course and an appropriate bar is furnished to denote each weapon with which he or she qualified. Each bar will be attached to the basic badge that indicates the qualification last attained with the respective weapon. Basic qualification badges are of three classes. Expert, sharpshooter, and marksman. The only weapons for which component bars are authorized are listed in Table 10. Basic marksmanship qualification badges are awarded to U.S. military and civilian personnel, and to foreign military personnel who qualify as prescribed.

(b) *Approval authority.* (1) *To military personnel.* Any commander in the rank or position of lieutenant colonel or higher may make awards to members of the Armed Forces of the United States; Camp/Post Commanders, Professors of Military Science, Directors of Army Instruction/Senior Army Instructors (DAI/SAI) or Reserve Officers' Training Corps (ROTC)/ (Junior Reserve Officers' Training Corps (JROTC) units may make awards to members of the ROTC/JROTC.

(2) *To civilian personnel.* Installation commanders may make the authorization for civilian guards to wear marksmanship badges. Civilian guards will procure badges at their own expense.

(c) *Description.* (1) *Expert.* A white metal (silver, nickel and rhodium), 1.17 inches in height, a cross patee with the representation of a target placed on the center thereof and enclosed by a wreath;

(2) *Sharpshooter:* A white metal (silver, nickel, and rhodium), 1 inch in height, a cross patee with the representation of a target placed on the center thereof;

(3) *Marksman.* A white metal (silver, nickel, and rhodium), 1 inch in height, a cross patee.

(d) *Component bars.* Weapons for which component bars are authorized are provided in Table 10 below.

TABLE 10.—WEAPONS FOR WHICH COMPONENT BARS ARE AUTHORIZED

Weapon	Inscription
Rifle	Rifle.
Pistol	Pistol.
Antiaircraft artillery	AA Artillery.
Automatic rifle	Auto Rifle.
Machinegun	Machinegun.
Field Artillery	Field Arty.
Tank Weapons	Tank Weapons.
Flamethrower	Flamethrower.
Submachine Gun	Submachine Gun.
Rocket Launcher	Rocket Launcher.
Grenade	Grenade.
Carbine	Carbine.
Recoilless rifle	Recoilless rifle.
Mortar	Mortar.
Bayonet	Bayonet.
Rifle, small bore	Small bore rifle.
Pistol, small bore	Small bore pistol.
Missile	Missile.
Aeroweapons	Aeroweapons.

§ 578.98 Ranger Tab.

(a) *Basic eligibility criteria.* The basic eligibility criteria for award of the Ranger Tab is as follows:

(1) Successful completion of a Ranger course conducted by the U.S. Army Infantry School.

(2) Any person who was awarded the Combat Infantryman Badge while serving during World War II as a member of a Ranger Battalion (1st–6th inclusive) or in the 5307th Composite Unit (Provisional) (Merrill's Marauders).

(3) Any person who successfully completed a Ranger course conducted by the Ranger Training Command at Fort Benning, GA.

(b) *Award approval authority.* The Commandant of the U.S. Army Infantry School; CG, USA HRC, and the Cdr, USA HRC-St. Louis, may award the Ranger Tab.

(c) *Description.* The ranger qualification tab is 2 3/8 inches wide with a black embroidered background and yellow embroidered border and letters. A subdued version with olive drab background and border and black letters is authorized for work uniforms.

§ 578.99 Special Forces Tab.

(a) *Basic eligibility criteria.* Any person meeting one of the criteria below may be awarded the Special Forces (SF) Tab:

(1) Successful completion of USAJFKSWCS approved Active Component (AC) institutional training leading to SF qualification;

(2) Successful completion of a USAJFKSWCS approved Reserve Component (RC) SF qualification program;

(3) Successful completion of an authorized unit administered SF qualification program.

(b) *Award approval authority.* The Commander, U.S. Army John F. Kennedy Special Warfare Center (USAJFKSWCS), Fort Bragg, NC 28307–5000.

(c) *Active Component institutional training.* The SF Tab may be awarded to all personnel who successfully complete the Special Forces Qualification Course or Special Forces Detachment Officer Qualification Course (previously known as the Special Forces Officer Course). These courses are/were conducted by the USAJFKSWC (previously known as the U.S. Army Institute for Military Assistance).

(d) *Reserve Component SF qualification programs.* The SF Tab may be awarded to all personnel who successfully complete a RC SF qualification program according to TRADOC Regulation 135–5, dated June 1, 1988 or its predecessors. The USAJFKSWCS will determine individual entitlement for award of the SF Tab based on historical review of Army, Continental Army Command (CONRAC), and TRADOC regulations prescribing SF qualification requirements in effect at the time the individual began an RC SF qualification program.

(e) *Unit administered SF qualification programs.* The SF Tab may be awarded to all personnel who successfully completed unit administered SF qualification programs as authorized by regulation. The USAJFKSWCS will determine individual entitlement to award of the SF Tab based upon historical review of regulations prescribing SF qualification requirements in effect at the time the individual began a unit administered SF qualification program.

(f) *Wartime service.* The SF Tab may be awarded to all personnel who performed the following wartime service.

(1) *Prior to 1955.* Service for at least 120 consecutive days in one of the following organizations: 1st Special Service Force, August 1942 to December 1944, OSS Detachment 101, April 1942 to September 1945, OSS Jedburgh Detachments, May 1944 to May 1945, OSS Operational Groups, May 1944 to May 1945, OSS Maritime Unit, April 1942 to September 1945, 6th Army Special Reconnaissance Unit (Alamo Scouts), February 1944 to September 1945, and 8240th Army Unit, June 1950 to July 1953.

(2) *1955 through 1975.* Any company grade officer or enlisted member awarded the CIB while serving for at least 120 consecutive days in one of the following type organizations: SF Operational Detachment-A (A-Team), Mobile Strike Force, SF Reconnaissance Team, and SF Special Project Unit.

(g) *Description.* The SF Tab is 3¼ inches wide with a teal blue embroidered background and border and yellow embroidered letters. A subdued version with olive drab background and borders and black letters is authorized for work uniforms. A metal SF Badge is authorized for wear on the mess/dress uniforms and green shirt.

§ 578.100 Sapper Tab.

(a) *Purpose.* The Sapper Tab was established by the Chief of Staff, Army, on June 28, 2004. It is authorized for award to U.S. military and civilian personnel and foreign military personnel who meet the prescribed eligibility criteria.

(b) *Basic eligibility criteria.* The basic eligibility criteria for award of the Sapper Tab is as follows:

(1) Successful graduation of a Sapper Leader Course conducted by the U.S. Army Engineer School.

(2) Any person who successfully graduates from a Sapper Leaders Course conducted by the U.S. Army Engineer School at Fort Leonard Wood, MO.

(3) The tab may be awarded retroactively to any person who successfully completed the Sapper Leaders Course on or after June 14, 1985.

(c) *Revocation.* The Sapper Tab may be revoked by the Commandant, U.S. Army Engineer School or the CG, USA HRC based on the recommendation of the field commander (Colonel and above) of the individual in question. This can be based on the opinion of that commander, that the individual has exhibited a pattern of behavior, expertise or duty performance that is inconsistent with expectations of the Army, that is, degree of confidence, commitment, competency and discipline. Award of the Sapper Tab may be revoked for any of the following conditions:

(1) Dismissal, dishonorable discharge, or conviction by courts martial for desertion in time of war.

(2) Failure to maintain prescribed standards of personal fitness and readiness to accomplish missions commensurate with position and rank.

(3) Upon relief or release for cause.

(d) Award approval authority. The Commandant of the U.S. Army Engineer School and the CG, USA HRC, may award the Sapper Tab.

(e) *Description.* The full color tab is 2⅜ inches (6.03 cm) long, 11/16 inch (1.75 cm) wide, with a ⅛ inch (.32 cm) red border and the word ''SAPPER'' inscribed in white letters 5/16 inch (1.79 cm) high. The woodland subdued tab is identical, except the background is olive drab and the word ''SAPPER'' is in black letters and the desert subdued tab has a khaki background with the word ''SAPPER'' in spice brown letters.

§ 578.101 Physical Fitness Badge.

(a) The Physical Fitness Badge was established by the Secretary of the Army on June 25, 1986. Effective February 1, 1999, soldiers who obtain a minimum score of 270 or above, with a minimum of 90 points per event on the Army Physical Fitness Test (APFT) and meet the body fat standards will be awarded the Physical Fitness Badge for Physical Fitness Excellence. Soldiers are required to meet the above criteria each record test to continue to wear the badge. Units can obtain APFT Standards and the new APFT Card (DA Form 705, dated June 1998) off the World Wide Web at *http://www.benning.army.mil/usapfs/*. Permanent Orders are not required for award of the Physical Fitness Badge.

(b) *Description.* On a dark blue disc 1⅝ inches (4.13 cm) in diameter edged dark blue; a yellow stylized human figure with arms outstretched in front of a representation of the coat of arms of the United States displaying six stars (three on each side of the figure and thirteen alternating white and red stripes, all encircled by a Brittany blue designation band inscribed ''PHYSICAL FITNESS'' at top and ''EXCELLENCE'' below separated on either side by a star, all navy blue; edged with a ⅛ inch (.32 cm) navy blue border. Overall diameter is 2⅝ inches (6.67 cm).

§ 578.102 U.S. Civilian Marksmanship Program.

The Civilian Marksmanship Program (CMP) was created by the U.S. Congress. The original purpose was to provide civilians an opportunity to learn and practice marksmanship skills so they would be skilled marksmen if later called on to service the U.S. military. Over the years the emphasis of the program shifted to focus on youth development through marksmanship. From 1916 to 1996 the CMP was administered by the U.S. Army. The National Defense Authorization Act for Fiscal Year 1996 (Title 10) created the Corporation for the (CPRPFS) Promotion of Rifle Practice and Firearms Safety, Inc. to take over administration and promotion of the CMP. The CPRPFS is a tax exempt not-for-profit 501(c)(3) organization that derives its mission from public law. The address for the CMP headquarters is PO Box 576, Port Clinton, Ohio, 43452.

§ 578.103 President's Hundred Tab.

(a) The President's Hundred Tab is awarded to soldiers who qualify among the top scoring 100 competitors in the President's Match.

(b) *Background.* (1) The National Rifle Association's (NRA) President's Match was instituted at the NRA matches of 1878, as the American Military Rifle Championship Match. It was patterned after an event for British Volunteers called the Queen's Match, which the NRA of Great Britain had initiated in 1860. In 1884, the name was changed to the President's Match for the Military Rifle Championship of the United States. It was fired at Creedmor, New York until 1891. In 1895, it was reintroduced at Sea Girt, New Jersey.

(2) The tradition of making a letter from the President of the United States the first prize began in 1904 when President Theodore Roosevelt, at the conclusion of the President's Match, personally wrote a letter of congratulations to the winner, Private Howard Gensch of the 1st Regiment of Infantry of the New Jersey National Guard.

(3) It cannot be ascertained as to when the President's Match was discontinued; however, it is known that it was not fired during World Wars I and II. It appears to have disappeared during the 1930s and during the depression when lack of funds severely curtailed the holding of matches of importance.

(4) The President's Match was reinstated in 1957 at the National Matches as ''The President's Hundred.'' The top-scoring 100 competitors in the President's Match were singled out for special recognition in a retreat ceremony in which they passed in review before the winner and former winners of this historic match.

(5) On May 27, 1958, the NRA requested the Deputy Chief of Staff, G–1 approval of a tab for presentation to each member of the ''President's Hundred.'' The NRA's plan was to award the cloth tab together with a metal tab during the 1958 National Matches. The cloth tab was of high level interest and approved for wear on the Army uniform on March 3, 1958. The first awards were made at Camp Perry, Ohio, in early September 1958. The metal tab was never officially authorized for wear on the uniform by military personnel. However, the NRA issued the metal tab to military personnel for wear on the shooting jacket.

(c) *Description.* A full-color embroidered tab of yellow 4¼ inches (10.80 cm) in length and ⅝ inch (1.59 cm) in height, with the words ''President's Hundred'' centered in ¼ inch (.64 cm) high green letters.

§ 578.104 Identification Badges.

(a) *Intent.* Identification Badges are authorized to be worn as public evidence of deserved honor and distinction to denote service performed in specified assignments in the White House, in the Office of the Secretary of Defense; in the Organization of the Joint Chiefs of Staff, in the Office of the Secretary of the Army or as a member of the General Staff; as a member of the Guard, Tomb of the Unknown Soldier; as a Drill Sergeant; as a U.S. Army Recruiter, as an Army National Guard Recruiter, as a U.S. Army Reserve Recruiter; or as a Career Counselor.

(b) It should be noted that some of the identification badges are not Department of the Army badges. Criteria and eligibility is subject to change and individuals are advised to contact the badge proponent for additional information and guidance.

(c) Eligibility requirements for the Identification Badges are provided in §§ 578.105 through 578.116.

§ 578.105 Presidential Service Badge and Certificate.

(a) The Presidential Service Badge and the Presidential Service Certificate were established by Executive Order 11174, September 1, 1964 as amended by Executive Order 11407, April 23, 1968; Executive Order 11520, March 25, 1970; and Executive Order 12793, March 20, 1992. This award replaced the White House Service Badge and Certificate established by Executive Order 10879, June 1, 1960.

(b) The certificate is awarded, in the name of the President by the Secretary of the Army, to members of the Army who have been assigned to the White House Office; to military units and support facilities under the administration of the White House Military Office or to other direct support positions with the Executive Office of the President (EOP). The certificate will not be issued to any member who is issued a Vice Presidential Certificate or similar EOP Certificate, for the same period of service. Such assignment must be for a period of at least one year, subsequent to January 21, 1989.

(c) The badge is awarded to those members of the Armed Forces who have been granted the Certificate and is awarded in the same manner in which the certificate is given. Once the badge is awarded, it may be worn as a permanent part of the uniform.

(d) Only one certificate will be awarded to an individual during an administration. Only one badge will be awarded to an individual regardless of the number of certificates received.

(e) The Presidential Service Badge and Certificate may be awarded posthumously.

§ 578.106 Vice Presidential Service Badge and Certificate.

(a) The Vice Presidential Service Badge was established by Executive Order 11926, July 19, 1976.

(b) The badge is awarded upon recommendation of the Military Assistant to the Vice President, by the Secretary of the Army to U.S. Army personnel who have been assigned to duty in the Office of the Vice President for at least 1 year after December 19, 1974.

(c) The badge shall be accompanied by a certificate, which is awarded in the same manner in which the badge is given. Once the badge is awarded it may be worn as a permanent part of the uniform.

(d) Only one badge will be awarded to an individual during an administration. Only one badge will be awarded to an individual regardless of the number of certificates received.

(e) The Vice Presidential Service Badge and Certificate may be awarded posthumously.

§ 578.107 Office of the Secretary of Defense Identification Badge.

(a) The Office of the Secretary of Defense Identification Badge is authorized under 10 U.S.C., to provide a distinct identification of military staff members while assigned and, after reassignment, to indicate that the service member satisfactorily served on the Secretary of Defense's staff. The prescribing directive for this badge is DOD 1348.33–M, Manual of Military Decorations and Awards.

(b) *Description.* The badge, 2 inches in diameter, consists of an eagle with wings displayed horizontally grasping three crossed arrows all gold bearing on its breast a shield paleways of thirteen pieces argent and gules a chief azure, a gold annulet passing behind the wing tips bearing thirteen gold stars above the eagle and a wreath of laurel and olive in green enamel below the eagle, the whole superimposed on a silver sunburst of 33 rays.

§ 578.108 Joint Chiefs of Staff Identification Badge.

(a) A certificate of eligibility may be issued to military personnel who have been assigned to duty and have served not less than 1 year after January 14, 1961 in a position of responsibility under the direct cognizance of the Joint Chiefs of Staff. The individual must have served in a position which requires

as a primary duty the creation, development, or coordination of policies, principles, or concepts pertaining to a primary function of the organization of the Joint Chiefs of Staff and must be approved for authorization to wear the badge by the Chairman, Joint Chiefs of Staff; the Director, Joint Staff; the head of a Directorate of the Joint Staff; or one of the subordinate agencies of the organization of the Joint Chiefs of Staff. The certificate of eligibility constitutes authority for wearing the badge as a permanent part of the uniform.

(b) *Description.* Within an oral silver metal wreath of laurel, 2¼ inches in height and 2 inches in width overall, the shield on the United States (the chief in blue enamel and the 13 stripes alternating white and red enamel) superimposed on four gold metal unsheathed swords, two in pale and two in saltire with points to chief, the points and pommels resting on the wreath, the blades and grips entwined with a gold metal continuous scroll surrounding the shield with the word JOINT at the top and the words CHIEFS OF STAFF at the bottom, all in blue enamel letters.

§ 578.109 Army Staff Identification Badge.

(a) The Army Staff Identification Badge (ASIB) and Army Staff Lapel Pin (ASLP) are neither awards nor decorations but are distinguished marks of service at HQDA. They are visible signs of professional growth associated with the important duties and responsibilities of the Army Secretariat and the Army Staff (ARSTAF). Issuance of the ASIB and the ASLP is not automatic, but is based on demonstrated outstanding performance of duty and approval by a principal HQDA official. Eligibility for the ASIB does not constitute eligibility for the ASLP; likewise, eligibility for the ASLP does not constitute eligibility for the ASIB.

(b) *Description.* The Coat of Arms of the United States in gold with the stripes of the shield to be enameled white and red and chief of the shield and the sky of the glory to be enameled blue, superimposed on a five-pointed black enameled star; in each reentrant angle of the star are three green enameled laurel leaves. The star is 3 inches in diameter for the Chief of Staff and former Chiefs of Staff and a 2 inches in diameter badge is authorized for all other personnel awarded the badge.

§ 578. 110 Guard, Tomb of the Unknown Soldier Identification Badge.

(a) *Wear.* (1) The Guard, Tomb of the Unknown Soldier Identification Badge will be authorized by the Commanding Officer, 3d U.S. Infantry Regiment (The Old Guard), for wear by each member of the Tomb of the Unknown Soldier who have met all specified criteria for earning the badge. Only soldiers serving in the following positions are authorized to earn the badge:

(i) Commander of the Guard (Platoon Leader).

(ii) Sergeant of the Guard (Platoon Sergeant).

(iii) Commander of the Relief.

(iv) Sentinels.

(2) Effective December 17, 1963 the Commanding Officer, 3d U.S. Infantry Regiment (The Old Guard), may authorize the wearing of the badge as a permanent part of the uniform for personnel who:

(i) Have served honorably for a minimum of 9 months, which need not be continuous, as a member of the Tomb of the Unknown Soldier.

(ii) Have met all specified criteria for earning the badge.

(iii) Have been recommended by the Commanding Officer, E Company, 3d Infantry Regiment (The Old Guard).

(3) If soldiers who have served honorable meet all specified criteria for earning the badge prior to serving 9 total months as a member of the Tomb of the Unknown Soldier and are recommended by the Commanding Officer, E Company (Honor Guard), 3d U.S. Infantry Regiment (The Old Guard), temporary wear of the badge may be authorized by the Commanding Officer, 3d U.S. Infantry Regiment (The Old Guard).

(4) Soldiers who are moved from authorized positions prior to completion of 9 total months may be considered for permanent award on a case-by-case basis by the Commanding Officer, 3d U.S. Infantry Regiment (The Old Guard).

(b) *Authorization.* (1) Authorization of the badge as a uniform item will be made by order of the 3d U.S. Infantry Regiment Commander citing this paragraph as authority. This order will constitute authority for individuals to wear the badge as a part of their military uniform. Original issue of the badge will be made by the Commanding Officer of the 3d U.S. Infantry Regiment (The Old Guard). Replacements will be purchased from approved commercial sources to ensure the quality of the badge.

(2) This award is retroactive to February 1, 1958 for personnel in the Active Army. This date reflects when the badge was first created and recognized by the Army for official wear. Former soldiers may apply to Commander, 3d U.S. Infantry Regiment (The Old Guard), Fort Myer, VA 22211–5020.

(c) *Revocation.* (1) When the Commander of The Old Guard becomes aware of information about a current or former member of the Tomb of the Unknown Soldier who was authorized permanent wear of the Tomb Identification Badge that suggests inappropriate conduct, including, but not limited to, acts of commission or omission for a member of that unit, or the intention to engage in inappropriate conduct, he will notify the Commander, E Company (Honor Guard), 3d U.S. Infantry Regiment (The Old Guard). The Commander, E Company (Honor Guard) will conduct a Commander's Inquiry to determine if the matter warrants further investigation, or if there is sufficient information to recommend to the Commanding Officer, 3d U.S. Infantry Regiment (The Old Guard) that the Tomb Identification Badge be revoked or that the soldier be reassigned, or both.

(2) Nothing stated in this section prevents the Regimental Commander from taking peremptory action deemed necessary or appropriate to protect the interests of the U.S. Army, the 3d U.S. Infantry Regiment (The Old Guard), or the soldiers under his command. Authority to revoke the badge remains with Commanding Officer, 3d U.S. Infantry Regiment (The Old Guard). Revocation will be announced in permanent orders.

(d) *Reinstatement.* Requests to have the badge reinstated will be directed to the current Commanding Officer, Headquarters, 3d U.S. Infantry Regiment (The Old Guard), Fort Myer, VA 22211–1199. Requests will be reviewed upon receipt of all information and forwarded to the reinstatement authority with a recommendation. Approval authority for reinstatement of the badge is the Commander, USA HRC (see § 578.3(c) for address).

(e) *Description.* A silver color metal badge 2 inches in width and 1 15/32 inches in height, consisting of an inverted open laurel wreath surmounted by a representation of the front elevation of the Tomb of the Unknown Soldier, the upper section containing the three figures of Peace, Victory, and Valor, the base bearing in two lines the words ''HONOR GUARD'', all in low relief.

§ 578.111 Army ROTC Nurse Cadet Program Identification Badge.

This badge is authorized for issue to and wear by contracted ROTC cadets enrolled in a program leading to a baccalaureate degree in nursing. It was formerly referred to as the Army Student Nurse Program Identification Badge.

§ 578.112 Drill Sergeant Identification Badge.

(a) *Eligibility.* Successful completion of the Drill Sergeant course and assignment as a drill sergeant to a training command.

(b) *Authorization.* The Commandant of the Drill Sergeant School will authorize the permanent wear of the badge to eligible personnel by memorandum. Officers are authorized to wear this badge if it was permanently awarded to them while in an enlisted status.

(c) *Description.* (1) *Metal.* A gold plated metal and enamel insignia, 2 inches (5.08 cm) in width and 1 51/64 inches (4.56 cm) in height, consisting of a flaming torch above a breast plate and jupon in front of a rattlesnake on a green background, grasping in its mouth at upper right and with its tail at upper left, the ends of an encircling scroll inscribed ''THIS WE'LL DEFEND'' in black letters, between 13 black star, 7 on the left and 6 on the right.

(2) *Embroidered.* An embroidered insignia, as described above in subdued colors, except the size is 2¾ inches (6.99 cm) in width and 2½ inches (6.35 cm) in height. The insignia is on a olive drab square background measuring 3½ inches (8.89 cm) in width and height.

§ 578.113 U.S. Army Recruiter Identification Badge.

(a) The U.S. Army Basic Recruiter Badge is authorized for wear by military personnel assigned or attached to the U.S. Army Recruiting Command (USAREC) as designated by the CG, USAREC. One, two, or three gold achievement stars may be awarded to eligible personnel meeting the criteria established for each achievement star by the CG, USAREC. These stars will be affixed to the basic badge.

(b) The U.S. Army Gold Recruiter Badge is authorized for wear by eligible personnel meeting the criteria established by the CG, USAREC. One, two, or three sapphire achievement stars may be awarded to eligible personnel meeting the criteria established for each achievement star by the CG, USAREC. These stars will be affixed to the gold badge.

(c) *Description.* A silver or gold color metal device 2⅛ inches (5.4cm) in height overall consisting of a circular band inscribed, between two narrow green enamel borders, with the words ''U.S. ARMY'' on the left and ''RECRUITER'' on the right, in silver letters, reading clockwise and at bottom center three five-pointed stars; perched upon the inside edge of the band at bottom center an eagle looking to its right its wings raised vertically and extended over the top of the band and supported between its wings diagonally from lower left to upper right a flaming torch with both ends extended outside the band.

§ 578.114 Career Counselor Badge.

(a) The Career Counselor Badge may be authorized for wear by enlisted personnel assigned to authorized duty positions which requires Primary Military Occupational Specialty (PMOS) 79S (Career Counselor). The award is retroactive to January 1, 1972.

(b) *Description.* An oxidized silver badge 1⅞ inches in height overall consisting of an eagle with raised and outstretched wings standing upon, at the point of the intersection, the shaft of a spear to the left and the barrel of a musket with fixed bayonet to the right, weapons terminated just below the point of crossing, and all enclosed by a horizontal oval-shaped frame, its lower half consisting of a scroll inscribed with the words ''CAREER COUNSELOR'' in raised letters, the upper half composed of two olive branches issuing from the ends of the scroll at either side and passing behind the eagle's wing tips, meeting at top center; all areas between the eagle, spear and musket and the frame are pierced.

§ 578.115 Army National Guard Recruiting and Retention Identification Badges.

The National Guard Bureau (NGB–ARP) is the proponent agency for the Army National Guard Recruiting and Retention Identification Badges. There are three degrees of badges that may be awarded; basic, senior, and master ARNG Recruiter Badges. See National Guard Regulation 672–2.

§ 578.116 U.S. Army Reserve Recruiter Identification Badge.

The U.S. Army Reserve Recruiter Badge no longer exists as a separate identification badge. All Regular Army and Reserve Component recruiters only wear the U.S. Army Recruiter Identification Badges authorized in § 578.109 of this part.

§ 578.117 Foreign and International Decorations and Awards to U.S. Army Personnel—General.

(a). *Guidelines.* The provisions for receipt and acceptance, or prohibition thereof, of foreign decorations and badges outlined in this chapter apply to—

(1) Active Army, Army National Guard, and U.S. Army Reserve soldiers to include retirees regardless of duty status.

(2) All civilian employees of DA including experts and consultants under contract to DA.

(3) All spouses, unless legally separated and family members of the personnel listed in paragraphs (a)(1) and (2) of this section.

(b) The provisions for receipt and acceptance, or prohibition thereof, of foreign decorations and badges outlined in this chapter do not apply when:

(1) A foreign decoration is awarded posthumously. Such decorations and accompanying documents will be forwarded to Commander, USA HRC, (see § 578.3(c) for address), for delivery to next of kin.

(2) The recipient of a decoration dies before approval of acceptance can be obtained.

(3) A foreign decoration was awarded for service while the recipient was a bona fide member of the Armed Forces of a friendly foreign nation, provided the decoration was made prior to employment of the recipient by the U.S. Government.

(4) A decoration for service in the Republic of Vietnam was accepted on or after March 1, 1961, but not later than March 28, 1973.

(c) *Restriction.* No person will request, solicit, or otherwise encourage the tender of a foreign decoration. Whenever possible, personnel are obligated to initially refuse acceptance of foreign decorations.

(d) *Constitutional restriction.* No person holding any office of profit or trust under the United States will, without the consent of the Congress, accept any present, emolument, office, or title of any kind whatsoever from any king, prince, or foreign state. (Constitution, Article. I, section. 9). This includes decorations and awards tendered by any official of a foreign government.

(e) *Congressional authorization.* 5 U.S.C. 7342 authorizes members of the Army to accept, retain, and wear foreign decorations tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the Secretary of the Army.

(f) *Participation in ceremonies.* Subject to the restriction in, an individual may participate in a ceremony and receive the tender of a foreign decoration. The receipt of the decoration will not constitute acceptance of the award by the recipient.

(g) *Disciplinary action.* The wearing of unauthorized awards, decorations, or other devices is a violation of the Uniform Code of Military Justice and may subject a soldier to appropriate disciplinary action.

§ 578.118 Individual Foreign Decorations.

Decorations received which have been tendered in recognition of active field service in connection with combat operations or which have been awarded for outstanding or unusually meritorious performance may be accepted and worn upon receiving the approval of HQ, USA HRC. In the absence of such approval, the decoration will become the property of the United States and will be deposited with HQ, USA HRC, for use or disposal.

§ 578.119 Foreign unit Decorations.

(a) During the period of military operations against an armed enemy and for 1 year thereafter; or while engaged in military operations involving conflict with an opposing foreign force; or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party, Army Component commanders, or major Army commanders are authorized to accept foreign unit decorations tendered to brigades, battalions, or smaller units under their command. HQ, USA HRC (AHRC–PDO–PA) will take final action on all tenders of foreign unit decorations to headquarters and headquarters companies of divisions and higher or comparable units. This authority will not be further delegated. Acceptance of foreign unit decorations will be reported to the CG, USA HRC for confirmation in DAGO. Confirmed foreign unit decorations are listed in DA Pamphlet 672–1 and DA Pamphlet 672–3.

(b) Foreign unit decorations may be accepted only if all the following conditions are met:

(1) The decoration is tendered by a friendly foreign nation for heroism or exceptionally meritorious service in direct support of military operations;

(2) The decoration is one that is conferred by the national government of the foreign country upon units of its own Armed Forces; and

(3) The unit is cited by name in orders of the national government of the foreign country.

(c) Foreign unit decorations will be neither recommended by nor sought by the Department of the Army. Solicitation of foreign unit decorations by individuals or units within the Army is prohibited. Acceptance of foreign unit decorations will be approved by CG, USA HRC, only when the award is proffered by the foreign government based on services performed and without solicitation.

(d) *Display of foreign unit decorations.* Awards of foreign unit decorations are evidenced by streamers, fourrageres, or lanyards attached to the pike or lance as a component part of organizational colors, distinguishing flags or guidons.

(e) The streamer will be of colors corresponding to the ribbon of the unit decoration with the name of the action or the area of operations embroidered thereon. A separate streamer will be furnished for each award. The medal will be attached only on ceremonial occasions.

(f) Additional foreign unit decorations which have been tendered and accepted but for which no streamer is authorized for unit colors and guidons are as follows:

(1) Citation in the Order of the Day of the Belgian Army;

(2) State of Vietnam Ribbon of Friendship;

(3) Netherlands Orange Lanyard;

(g) *Emblems.* (1) Normally when a unit is cited, only the organizational color, distinguishing flag, or guidon is decorated. Unless specifically authorized by orders of the foreign government and approved by CG, USA HRC, no emblem is issued but may be purchased for wear on the uniform. See AR 670–1 for information on wear of foreign unit awards.

(2) The only emblems so far authorized for wear on the uniform to indicate a foreign decoration received by a unit are the French and Belgian Fourrageres, the Netherlands Orange Lanyard, the Philippine Republic Presidential Unit Citation Badge, the Republic of Korea Presidential Unit Citation Badge, the Vietnam Presidential Unit Citation Badge, the Republic of Vietnam Gallantry Cross Unit Citation Badge, and the Republic of Vietnam Civil Actions Medal Unit Citation Badges. Only the French Fourragere is authorized for temporary wear.

(3) The following emblems are not sold by the Department of the Army, but may be purchased if desired from civilian dealers in military insignia and some Army Exchanges: Philippine Republic, Republic of Korea, and the Vietnam Presidential Unit Citations, the Republic of Vietnam Gallantry Cross, and the Republic of Vietnam Civil Actions Medal.

§ 578.120 Foreign Badges.

(a) *Eligibility requirements.* Qualification and special skill badges may be accepted if awarded in recognition of meeting the criteria, as established by the foreign government concerned, for the specific award. Only those badges that are awarded in recognition of military activities and by the military department of the host country are authorized for acceptance and permanent wear. Badges that do not meet these criteria may be authorized for acceptance but not for wear, and will not be entered in the official military records of the recipient. Of particular importance are the criteria established by the military department of the host country; for example, if a particular badge is authorized for award only to enlisted personnel of host country then badge may be accepted and worn by U.S. Army enlisted personnel.

(b) *Awarding authority.* Commanders (overseas and CONUS) serving in the rank of brigadier general or higher and colonel level commanders who exercise general court-martial authority are delegated authority to approve the acceptance, retention, and permanent wear of foreign badges. This authority may be further delegated to commanders charged with custody of military personnel record files. The burden of proof rests on the individual soldier to produce valid justification, that is, orders, citations, or other original copies of the foreign elements that awarded them the badge. A list of approved badges are provided in Appendix D, AR 600–8–22 and the Army Awards Branch Website: *https://www.perscomonline.army.mil/tagd/awards/Appendix_D.doc*. Request for accept and wear of any foreign badges not listed in Appendix D or the website will be forwarded to HQ, USA HRC (see § 578.3 (c) for address).

(c) *Other badges.* Badges presented to Army personnel which do not fall under the category of qualification or special skill badges discussed in paragraph (a) of this section (honorary badges, identification devices, insignia) will be reported in accordance with AR 1–100, paragraph 6. Badges in these categories are considered gifts. They will not be authorized for wear nor entered in official military personnel records.

(d) *Wear.* AR 670–1 governs the manner of wear of foreign qualification and special skill badges.

§ 578.121 United Nations Service Medal.

(a) The United Nations Service Medal (UNSM) was established by United Nations General Assembly Resolution 483(V), December 12, 1950. Presidential acceptance for the United States Armed Forces was announced by the DOD on November 27, 1951.

(b) *Qualifications.* To qualify for award of the UNSM, individuals must meet one of the following:

(1) Members of the Armed Forces of the United States dispatched to Korea or adjacent areas for service on behalf of the United Nations in the action in Korea.

(2) Other personnel dispatched to Korea or adjacent areas as members of paramilitary and quasi-military units designated by the U.S. Government for service in support of United Nations action in Korea and certified by the United Nations Commander in Chief as having directly supported military operations there.

(3) Personnel awarded the Korean Service Medal automatically establish eligibility for the United Nations Service Medal.

(4) Service with a national contingent designated by the U.S. Government for service in support of the United Nations action in Korea and certified by the United Nations Commander in Chief as having directly supported military operations in Korea.

(c) *Service requirements.* Service will be for periods provided between June 27, 1950 and July 27, 1954, inclusive, under either of the following conditions:

(1) Within the territorial limits of Korea or the waters immediately adjacent thereto or in the air over Korea or over such waters.

(2) The service prescribed must have been performed while serving with any unit as provided in paragraphs (b)(1) and (2) of this section as specified below:

(i) While on an assignment to such unit for any period between the dates specified above.

(ii) While attached to such a unit for a period of 30 days consecutive or nonconsecutive, between the dates specified above.

(iii) While in active combat against the enemy under conditions other than those prescribed in paragraphs (b) and (c) of this section if a combat decoration has been awarded or an individual certificate testifying to such combat service has been furnished by the commander of an independent force or a division, ship, or air group, or comparable or higher unit.

(d) *Exclusions.* No personnel of the United Nations or of its specialized agencies or of any national government service other than as prescribed above and no International Red Cross personnel engaged for service under the United Nations Commander in Chief with any United Nations relief team in Korea will be eligible for award of the medal.

§ 578.122 Inter-American Defense Board Medal.

(a) The Inter-American Defense Board Medal was established by the Ninety-first Session of the Inter-American Defense Board on December 11, 1945 and authorized by Executive Order 11446, January 18, 1969.

(b) U.S. military personnel who have served on the Inter-American Defense Board for at least 1 year as chairman of the board, delegates, advisers, officers of the staff, officers of the secretariat, or officers of the Inter-American Defense College may wear the Inter-American Defense Board ribbon permanently.

(c) U.S. military personnel who have been awarded the Inter-American Defense Board Medal and ribbon may wear them when attending meetings, ceremonies, or other functions where Latin American members of the Board are present.

§ 578.123 Philippine Defense Ribbon.

The Philippine Defense Ribbon is awarded for service in the defense of the Philippines from December 8, 1941 to June 15, 1942, under either of the following conditions:

(a) Participation in any engagement against the enemy in Philippine territory, in Philippine waters, or in the air over the Philippines or over Philippine waters. An individual will be considered as having participated in an engagement if they meet one of the following:

(1) Was a member of the defense garrison of the Bataan Peninsula or of the fortified islands at the entrance to Manila Bay.

(2) Was a member of and present with a unit actually under enemy fire or air attack.

(3) Served on a ship that was under enemy fire or air attack.

(4) Was a crewmember or passenger in an airplane that was under enemy aerial or ground fire.

(b) Assigned or stationed in Philippine territory or in Philippine waters for not less than 30 days during the period.

(c) Individuals who meet conditions set forth in paragraphs (a) and (b) of this section are authorized to wear a bronze service star on the ribbon.

§ 578.124 Philippine Liberation Ribbon.

(a) The Philippine Liberation Ribbon is authorized by DA Circular 59, March 8, 1948.

(b) It is awarded for service in the liberation of the Philippines from October 17, 1944 to September 3, 1945, under any of the following conditions:

(1) Participated in the initial landing operations on Leyte or adjoining islands from October 17, 1944 to October 20, 1944. An individual will be considered as having participated in such operations if he landed on Leyte or adjoining islands, was on a ship in Philippine waters, or was a crewmember of an airplane, which flew over Philippine territory during the period.

(2) Participated in any engagement against the enemy during the campaign on Leyte and adjoining islands. An individual will be considered as having participated in combat if he meets any of the conditions set forth in Philippine Defense Ribbon § 578.123(a)(2) through (4).

(3) Participated in any engagement against the enemy on islands other than those included in paragraph (b)(2) of this section. An individual will be considered as having participated in combat if he or she meets any of the conditions set forth in Philippine Defense Ribbon § 578.123(a)(2) through (4).

(4) Served in the Philippine Islands or on ships in Philippine waters for not less than 30 days during the period.

(c) *Bronze service stars.* An individual who meets more than one of the conditions set forth in paragraph (a) of this section is authorized to wear a bronze service star on the ribbon for each additional condition under which he or she qualifies other than that under which he or she is eligible for the initial award of the ribbon.

§ 578.125 Philippine Independence Ribbon.

The Philippine Independence Ribbon is authorized by DA Circular 59, 1948. Any recipient of both the Philippine Defense and Philippine Liberation ribbons is eligible for award of the Philippine Independence Ribbon. United States Army personnel authorized to wear the Philippine Independence Ribbon under the established criteria, may continue to wear the ribbon, provided the authority for such wear was recorded before November 24, 1954.

§ 578.126 United Nations Medal.

(a) *Authorized by the Secretary General of the United Nations and Executive Order 11139, January 7, 1964.* U.S. service members who are or have been in the service of the United Nations in operations designated by the Secretary of Defense may accept the United Nations Medal (UNM) when awarded by the Chief of the United Nations Mission.

(b) *Eligibility.* The eligibility criteria for award of the UNM requires that an individual serve under the operational or tactical control of the United Nations and serve a minimum of 90 consecutive days in the service of the United Nations. The following United Nations missions/operations have been approved for acceptance and wear:

(1) United Nations Observation Group in Lebanon (UNOGIL);

(2) United Nations Truce Supervision Organization in Palestine (UNTSO);

(3) United Nations Military Observer Group in India and Pakistan (UNMOGIP);

(4) United Nations Security Forces, Hollandia (UNSFH);

(5) United Nations Transitional Authority in Cambodia (UNTAC);

(6) United Nations Advance Mission in Cambodia (UNAMIC);

(7) United Nations Protection Force in Yugoslavia (UNPROFOR);

(8) United Nations Mission for the Referendum in Western Sahara (MINURSO);

(9) United Nations Iraq/Kuwait Observation Mission (UNIKOM);

(10) United Nations Operations in Somalia (to include U.S. Quick Reaction Force members) (UNOSOM);

(11) United Nations Mission in Haiti (UNMIH);

(12) United Nations Medal Special Service (UNMSS).

(c) *Wear.* Each United Nations mission for which an UNM is awarded is commemorated by a suspension and service ribbon of unique colors and design. The ribbon and medallion combination take on the name of the specific operation for which the combination was created. For example, the operation in the Former Republic of Yugoslavia is the United Nations Protection Force (UNPROFOR), yielding the UNPROFOR Medal. Service members who are awarded an UNM may wear the first UNM with unique suspension and service ribbon for which they qualify. A bronze service star will denote subsequent awards of the UNM for service in a different United Nations mission. Only one United Nations ribbons is authorized for wear.

(d) *Presentation.* The Senior Representative of the Secretary-General who makes the award normally makes presentation of the UNM in the field. Approval authority to accept and wear the UNM to member of the Armed Forces of the United States is the Secretary of Defense. When presentation is not so accomplished, any person who believes he or she is eligible for award may submit to Commander, USA HRC, (see § 578.3 (c) for address) and a request for such award with copy of any substantiating documents. Commander, AHRC will forward each such request through the Office of Internal Administration, Office of the Assistant Secretary of State for International Organization Affairs, to the United Nations for consideration.

(e) *Description.* (1) Medal. The medal is bronze, 1⅜ inches in diameter, with a top view of the globe enclosed at sides and bottom by a wreath and the letters ''UN'' at the top of the medal. On the reverse side is the inscription ''IN THE SERVICE OF PEACE''. The United Nations Service Medal Korea is the same design, except the obverse does not include the letters ''UN'' and the medal has a hanger bar with the inscription ''KOREA''. On the reverse side of the United Nations Service Medal Korea is the inscription ''FOR SERVICE IN DEFENCE OF THE PRINCIPLES OF THE CHARTER OF THE UNITED NATIONS''.

(2) *Ribbon.* Each United Nations mission for which a UNM is awarded is commemorated by a suspension and service ribbon of unique colors and design. The ribbon and medallion combination take on the name of the specific operation for which the combination was created. For example, the operation in the Former Republic of Yugoslavia is the United Nations Protection Force (UNPROFOR), yielding the UNPROFOR Medal. Service members who are awarded a UNM may wear the first UNM with unique suspension and service ribbon for which they qualify. A bronze service star will be worn to denote subsequent awards of the UNM for service in a difference United Nations mission. Only one United Nations ribbon is authorized for wear.

§ 578.127 North Atlantic Treaty Organization Medal.

(a) The North Atlantic Treaty Organization (NATO) Medal is awarded by the Secretary-General of the North Atlantic Treaty Organization to military and civilian members of the Armed Forces of the United States who participate in NATO operations related to the former Republic of Yugoslavia. The Secretary of Defense authorized acceptance of the NATO Medal on November 14, 1995.

(b) *Acceptance.* Acceptance of the NATO Medal has been approved for U.S. military personnel who serve under NATO command or operational control in direct support of NATO operations in the former Republic of Yugoslavia, or as designated by the Supreme Allied Command, Europe (SACEUR), from July 1, 1992 to a date to be determined.

(c) *Presentation.* The NATO Medal will normally be presented by the Allied Command Europe headquarters exercising operational command or control over U.S. military units or individuals prior to their departure from service with NATO.

(d) *Medal set.* The medal set includes a ribbon clasp denoting the specific operation for which the award was made. U.S. service members are authorized to retain the ribbon clasp presented but may not wear the clasp. Only the basic medal and service ribbon are authorized for wear on the uniform.

(e) *Subsequent awards.* Subsequent awards (if approved by the Secretary of Defense) for service in a different NATO operation, U.S. military personnel will affix a bronze service star to the NATO Medal suspension ribbon and service ribbon.

(f) *Precedence.* The NATO Medal shall have the same precedence as the United Nations Medal, but will rank immediately below the United Nations Medal when the wearer has been awarded both medals.

(g) *Description.* The medal is bronze, 1⅜ inches in diameter, bearing on the obverse the NATO emblem (a four pointed star emitting a ray from each point superimposed on an annulet) enclosed in base by a wreath of olive. The reverse side has a band inscribed ''NORTH ATLANTIC TREATY ORGANIZATION'' at top and ''ORGANISATION DU TRAITE DE L'ATLANTIQUE NORD'' at the bottom. In the center is a sprig of olive between the inscription ''IN SERVICE OF PEACE AND FREEDOM'' above and ''AU SERVICE DE LA PAIX ET DE LA LIBERTE'' below. The ribbon is 1⅜ inches wide and consists of the following stripes: 5/32 inch Yale Blue 67176; ⅛ inch White 67101; 13/16 inch Yale Blue; ⅛ inch White; and 5/32 inch Yale Blue.

§ 578.128 Multinational Force and Observers Medal.

(a) The Multinational Force and Observers (MFO) Medal was established by the Director General, Multinational Force and Observers, March 24, 1982. Presidential acceptance for the United States Armed Forces and DOD civilian personnel is announced by DOD on July 28, 1982.

(b) *Eligibility.* To qualify for the award personnel must have served with the MFO at least ninety (90) cumulative days after August 3, 1981. Effective March 15, 1985, personnel must serve 6 months (170 days minimum) with the MFO to qualify for the award. Periods of service on behalf of the MFO outside of the Sinai, and periods of leave while a member is serving with the MFO, may be counted toward eligibility for the MFO medal. Qualifying time may be lost for disciplinary reasons.

(c) *Awards.* The Director General, MFO makes awards, or in his or her name by officials to whom he or she delegates awarding authority.

(d) *Presentation.* Presentations are usually to be made by personnel designated by the Director General, MFO. When presentation is not

accomplished, any person with MFO service who believes he or she is eligible for the award may submit a request for the award to Commander, USA HRC, (see § 578.3 (c) for address). This request must include complete details related to MFO duty, including geographical location and inclusive dates of service, and copies of all substantiating documents. Commanding General, USA HRC, will then forward each such request through the Office of Internal Administration, Office of the Assistant Secretary of State for International Organization Affairs, to the Multinational Force and Observers for consideration.

(e) *Subsequent awards.* An appropriate numeral starting with numeral 2 will indicate second and subsequent awards for each completed 6-month tour. If an individual has not completed a cumulative 6-month tour, he or she is not eligible for award of the MFO medal unless one of the following conditions exists:

(1) The award is to be made posthumously.

(2) The member is medically evacuated due to service-incurred injuries or serious illness.

(3) The member is withdrawn at the request of the parent Government for national service reasons under honorable conditions.

§ 578.129 Republic of Vietnam Campaign Medal.

(a) *Criteria.* The Republic of Vietnam Campaign Medal is awarded by the Government of the Republic of Vietnam to members of the United States Armed Forces and authorized by DOD 1348.33–M.

(b) *Requirements.* To qualify for award personnel must meet one of the following requirements:

(1) Have served in the Republic of Vietnam for 6 months during period specified in paragraph (c) of this section.

(2) Have served outside the geographical limits of the Republic of Vietnam and contributed direct combat support to the Republic of Vietnam and Armed Forces for 6 months. Such individuals must meet the criteria established for the Armed Forces Expeditionary Medal (Vietnam) or the Vietnam Service Medal, during the period of service required to qualify for the Republic of Vietnam Campaign Medal.

(3) Have served as in paragraph (b)(1) or (2) of this section for less than 6 months and have been one of the following:

(i) Wounded by hostile forces.

(ii) Captured by hostile forces, but later escaped, was rescued or released.

(iii) Killed in action or otherwise in line of duty.

(4) Personnel assigned in the Republic of Vietnam on January 28, 1973 must meet one of the following: (i) Served a minimum of 60 days in the Republic of Vietnam as of that date.

(ii) Completed a minimum of 60 days service in the Republic of Vietnam during the period from January 28, 1973 to March 28, 1973, inclusive.

(c) Eligibility for award under authority of this paragraph is limited to the period from March 1, 1961 to March 2, 1973, inclusive. Eligibility for acceptance of this award solely by virtue of service performed prior to March 1, 1961 or subsequent to March 1973 is governed by AR 600–8–22, paragraph 9–8.

(d) The Republic of Vietnam Campaign Medal with Device (1960) and the miniature medal are items of individual purchase.

§ 578.130 Kuwait Liberation Medal—Saudi Arabia.

(a) The Kuwait Liberation Medal is awarded by the Government of Saudi Arabia to members of the Armed Forces of the United States and authorized by DOD on January 3, 1992.

(b) It is awarded to members of the Armed Forces of the U.S. who participated in Operation DESERT STORM between January 17, 1991 and February 28, 1991 in one or more of the following areas: Persian Gulf; Red Sea; Gulf of Oman; that portion of the Arabian Sea that lies north of 10 degrees north latitude and west of 68 degrees east longitude; the Gulf of Aden; or the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates.

(c) To be eligible personnel must meet one of the following qualifications:

(1) Be attached to or regularly serving for one or more days with an organization participating in ground or shore operations.

(2) Be attached to or regularly serving for one or more days aboard a naval vessel directly supporting military operations.

(3) Actually participate as a crew member in one or more aerial flights supporting military operations in the areas designated above.

(4) Serve on temporary duty for 30 consecutive days during the period January 17, 1991 to February 28, 1991 under any of the criteria in paragraphs (b)(1) through (3) of this section. This time limit may be waived by HQ, USA HRC (AHRC–PDO–PA) for people participating in actual combat operations.

(c) The eligibility period and geographic boundaries were specified by the Government of Saudi Arabia and may not be waived.

(d) Posthumous award to the next of kin of any soldier who lost his or her life, while, or as a direct result of, participating in Operation DESERT STORM between January 17, 1991 and February 28, 1991, without regard to the length of such service, will be made by HQ, USA AHRC (AHRC–PDO–PA).

(e) The Kuwait Liberation Medal, ribbon, and miniature medal are items of individual purchase. The Army accomplished an initial issue to eligible personnel from a one-time stock provided by the Government of Saudi Arabia in 1992.

(f) *Description.* The medal is $1\frac{25}{32}$ inches in width and is described as follows: On a gold sunburst with stylized silver rays, a globe depicting the Arabian Peninsula encircled by a wreath of palm between a scroll in the base inscribed ''Liberation of Kuwait'' and at the top a palm tree issuing from two diagonally crossed sabers, all gold. The ribbon is $1\frac{3}{8}$ inches wide and consists of the following stripes: 5/32 inch Old Glory Red 67156; $\frac{4}{64}$ inch black 67138; $\frac{9}{64}$ inch white stripe 67101; center $\frac{5}{8}$ inch irish green 67189; $\frac{9}{64}$ inch white stripe 67101; $\frac{5}{64}$ inch black 67138; and $\frac{5}{32}$ inch Old Glory Red.

§ 578.131 Kuwait Liberation Medal—Kuwait.

(a) The Kuwait Liberation Medal is awarded by the Government of Kuwait to members of the Armed Forces of the United States and authorized by the DOD on August 7, 1995.

(b) It is awarded to members of the Armed Forces of the U.S. who served in support of Operations DESERT SHIELD and DESERT STORM between August 2, 1990 and August 31, 1993 in one or more of the following areas: the Arabian Gulf; the Red Sea; the Gulf of Oman; that portion of the Arabian Sea that lies north of 10 degrees north latitude and west of 68 degrees east longitude; the Gulf of Aden; or the total land areas of Iraq, Kuwait, Saudi Arabia, Omar, Bahrain, Qatar, and the United Arab Emirates.

(c) To be eligible, personnel must meet one of the following qualifications:

(1) Be attached to or regularly serving for one or more days with an organization participating in ground and/or shore operations.

(2) Be attached to or regularly serving for one or more days aboard a naval vessel directly supporting military operations.

(3) Actually participate as a crew member in one or more aerial flights directly supporting military operations in the areas designated above.

(4) Serve on temporary duty for 30 consecutive days or 60 nonconsecutive days during the period August 2, 1990 to August 31, 1993 under any of the criteria in paragraphs (c)(1) through (3) of this section. This time limit may be waived by HQ, USA HRC (AHRC–PDO–PA) for soldiers participating in actual combat operations.

(d) The eligibility period and geographic boundaries were specified by the Government of Kuwait and may not be waived.

(e) Posthumous award to the next of kin of any soldier who lost his life, while, or as direct result of participating in Operations DESERT SHIELD/STORM between August 2, 1990 and August 31, 1993, without regard to the length of such service, will be made by HQ, USA HRC (AHRC–PDO–PA).

(f) The Government of Kuwait provided a one-time stock of the Kuwait Liberation Medal for initial issue to eligible personnel.

(g) Description. A bronze metal and enamel, 1 9/16 inches in diameter suspended from a bar by a wreath. A obverse bears the Coat of Arms of the State of Kuwait. The Coat of Arms consists of the shield of the flag design in color superimposed on a falcon with wings displayed. The falcon supports a disk containing a sailing ship with the full name of the State written at the top of the disk. At the top of the medal is the inscription ''1991 Liberation Medal'' in Arabic letters. The reverse side is the map of Kuwait on a rayed background. The ribbon is the pattern of the flag of the State of Kuwait and consists of three equal stripes 29/64 inch each of the following colors: old glory red (cable 67156), white (cable 67101), and Irish Green (cable 67189). A black trapezium is at top of the ribbon drape and service ribbon.

§ 578.132 Republic of Korea War Service Medal.

(a) The Republic of Korea War Service Medal (ROKWSM) was originally offered to the Armed Forces of the United States by the Ministry of Defense, Republic of Korea, on November 15, 1951. On 20 August 1999, the Assistant Secretary of Defense (Force Management & Policy) approved acceptance and wear of the medal for veterans of the Korean War.

(b) *Criteria.* It is awarded to members of the U.S. Armed Forces who served in Korea and adjacent waters between June 25, 1950 and July 27, 1953. The service prescribed must have been performed as follows:

(1) While on permanent assignment; or

(2) While on temporary duty within the territorial limits of Korea or on waters immediately adjacent thereto for 30 consecutive days or 60 nonconsecutive days; or

(3) While as crew members of aircraft, in aerial flight over Korea participating in actual combat operations or in support of combat operations.

(c) *Supply of the medal.* The Air Force is the Executive Agency for the ROKWSM. Therefore, requests for award of the medal should be forwarded to the following address: HQ, Air Force Personnel Center, DPPPRK, 550 C Street W, Suite 12, Randolph AFB, TX 78150–4612.

(d) *Order of precedence.* Order of precedence for non-U.S. service medals and ribbons is determined by date of approval. Accordingly, the ROKWSM will be worn after the Kuwait Liberation Medal—Government of Kuwait. For the majority of Korean War veterans, the medal will be worn after the United Nations Medal or the Republic of Vietnam Campaign Medal, if they served during the Vietnam Conflict era.

(e) *Description.* A gold six pointed star with rays, 37mm in diameter, superimposed by a white enameled star, 42mm in diameter, overall in center a green disc, 18mm in diameter, with the outline of the Vietnamese country with a red flame of three rays between North and South Vietnam. On the reverse of the medal is a circle with a designated band containing the word ''CHIEN–DICH'' (Campaign) at the top and ''BOI–THINH'' (Medal) at the bottom. Across the center of the circle is the word ''VIET–NAM''. The ribbon is 1 3/8 inches wide and consists of the following stripes: 1/16 inch gherkin green 67183; 3/16 inch white 67101; 5/16 inch gherkin green 67183; 1/4 inch white 67101; 5/16 inch gherkin green 67183; 3/16 inch white 67101; 1/16 inch gherkin green 67183, and 3/16 inch white 67101.

§ 578.133 Certificates for Decorations.

(a) *Current issue.* A certificate will be presented with each award of an authorized military decoration. In no case will a commander issue a certificate indicating award of a military decoration other than on the standard DA certificate for the awarded decoration. Awards certificates will be issued without reference to numbered oak leaf clusters.

(b) *Completion.* Each certificate for award of the Legion of Merit (LM), Meritorious Service Medal (MSM), Army Commendation Medal (ARCOM) and Army Achievement Medal (AAM) will be completed by the awarding commander and will bear his or her personal signature in the lower right corner. The Permanent Orders number and date are typed on the line on the left side of the LM, MSM, ARCOM, and AAM certificates. The grade, name, and branch of service, together with the place and dates of the act, achievement, or service of the recipient, will be inserted on the certificate in the appropriate spaces.

(c) *Replacement of Award Certificates.* (1) *Veterans and retirees.* Veterans and retirees awarded U.S. military decorations to whom an appropriate certificate has not been issued may apply for such certificate by writing to the appropriate office indicated in § 578.66.

(2) *Active duty soldiers.* Active duty soldiers may request replacement certificate through command channels to the headquarters currently having authority to award the decoration for which certificate is required. Each request should include a copy of the orders announcing the award. The replacement certificate will be annotated with the original order number (for example, Per Permanent Orders XX–XX, January, 1, 2000).

§ 578.134 Certificate of Achievement.

(a) Commanders may recognize periods of faithful service, acts, or achievements which do not meet the standards required for decorations by issuing to individual U.S. military personnel a DA Form 2442 (Certificate of Achievement) or a Certificate of Achievement of local design.

(b) Certificates of Achievement will be issued under such regulations as the local commander may prescribe.

(c) If a locally designed Certificate of Achievement is printed for use according to this regulation, it may bear reproductions of insignia. In the interest of economy, the use of color will be held to a minimum.

(d) The citation on such certificates will not be worded so that the act of service performed appears to warrant the award of a decoration.

(e) No distinguishing device is authorized for wear to indicate the receipt of a Certificate of Achievement.

§ 578.135 Certificate of appreciation to employers.

(a) To improve employer acceptance of the concept of military leave for participation in Reserve Component training and to encourage employers to adopt liberal military leave policies, certificates of appreciation may be presented to employers who have

wholeheartedly and consistently cooperated in granting military leave to employees.

(b) The Commanding Generals, TRADOC, FORSCOM, State adjutants general, Army Reserve General Officer Commands, Corps, and the U.S. Army Military District of Washington are authorized to make this award.

(c) Certificates will be presented by the awarding commander or by an authorized representative, as appropriate.

§ 578.136 Certificates for badges.

Commanders authorized to award badges may issue, simultaneously, appropriate certificates of achievement to persons under their command who have qualified for the respective badges. The certificate also may bear a citation which will follow closely the prescribed eligibility requirements for the respective badge.

§ 578.137 Cold War Recognition Certificate.

Public Law 105–85, Section 1084, established a Cold War Recognition Certificate to recognize all members of the Armed Forces and qualified Federal government civilian personnel who faithfully and honorably served the United States during the Cold War Era from September 2, 1945 to December 26, 1991. The Cold War Recognition System home-page at *https://www.perscomonline.army.mil/tagd/coldwar/default.htm* announces the program and provides instructions for individual requests.

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing Gila Chub as Endangered With Critical Habitat; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG16

Endangered and Threatened Wildlife and Plants; Listing Gila Chub as Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), list the Gila chub (*Gila intermedia*) as endangered with critical habitat under the Endangered Species Act of 1973, as amended (Act). Gila chub were historically found throughout the Gila River basin in southern Arizona, southwestern New Mexico, and northeastern Sonora, Mexico. The Gila chub has been reduced in numbers and distribution in the majority of its historical range (Minckley 1973; Weedman *et al.* 1996). Where it is still present, populations are often small, fragmented, and at risk from known and potential threats and from random events such as drought, flood events, and wildfire. The primary threats to Gila chub include predation by and competition with nonnative organisms, including fish in the family Centrarchidae (*Micropterus* spp., *Lepomis* spp.), other fish species, bullfrogs (*Rana catesbeiana*), and crayfish (*Orconectes virilis*), and habitat degradation from surface water diversions and ground water withdrawals. Secondary threats include habitat alteration, destruction, and fragmentation resulting from numerous factors that are discussed in this final rule. The current status of the Gila chub is much degraded from historical levels. The species exists as a few, small isolated, populations. The small size of these populations, and their degree of fragmentation and isolation, cause them to be highly susceptible to threats. We believe that due to the current reduced status of the Gila chub and the severity of threats, including nonnative species predation and habitat destruction, the Gila chub is likely to become extinct throughout all or a significant portion of its range. This final rule will implement the Federal protection and recovery provisions of the Act for this species. We are also designating approximately 160.3 river miles (mi) (258.1 kilometers (km)) of critical habitat located in Grant County, New Mexico, and Yavapai, Gila, Greenlee, Graham, Cochise, Santa Cruz, Pima, and Pinal Counties in Arizona.

DATES: This final rule is effective December 2, 2005.

ADDRESSES: Supporting documentation for this rulemaking is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021–4951. The final rule, economic analysis, environmental assessment, and more detailed color maps of critical habitat are also available online at *http://www.fws.gov/arizonaes/*. GIS files of the critical habitat maps are also available online at *http://criticalhabitat.fws.gov/*.

FOR FURTHER INFORMATION CONTACT: Steven L. Spangle, Field Supervisor, Arizona Ecological Services Field Office (telephone, 602–242–0210; facsimile, 602–242–2513).

SUPPLEMENTARY INFORMATION: This final rule lists the Gila chub as endangered and designates critical habitat.

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 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 470 species or 38 percent of the 1,253 listed species in the United States under the jurisdiction of the Service have designated critical habitat.

We address the habitat needs of all 1,253 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 two courts found our definition of adverse modification to be invalid (March 15, 2001, decision of the United States Court Appeals for the Fifth Circuit, *Sierra Club* v. *U.S. Fish and Wildlife Service,* et al., F.3d 434 and the August 6, 2004, Ninth Circuit judicial opinion, *Gifford Pinchot Task Force, et al.* v. *United States Fish and Wildlife Service*). On December 9, 2004, the Director issued guidance to be used in making section 7 adverse modification determinations.

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 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

It is our intent to discuss only those topics directly relevant to this final listing and critical habitat rule. For more information on biology of the Gila chub, refer to the August 9, 2002, proposed rule (67 FR 51948). However, some of the information presented in the proposed rule is discussed below in this final rule, where appropriate, such as the summary of factors affecting the species.

Description and taxonomy. The Gila chub is a member of the minnow family Cyprinidae. The Gila chub is small-finned, deep-bodied, chubby (chunky), and darkly colored. Adult males average about 150 millimeters (mm) (6 inches (in)) in total length; females can exceed 200 mm (8 in). Scales are coarse, thick, and broadly overlapped, and radiate out from the base (Minckley 1973; Weedman *et al.* 1996).

Baird and Girard (1854:28) published a description of the Gila chub, as *Gila gibbosa,* based on the type specimen collected in 1851 from the Santa Cruz River. For nomenclature reasons, the name was changed by Girard to *Tigoma intermedia* in 1856, working with specimens from the San Pedro River. Despite that and other name changes, the Gila chub has been recognized as a distinct species since the 1850s, with the exception of a short period in the mid-1900s when it was placed as a subspecies of *Gila robusta* (Miller 1945). For the past 30 years, *Gila intermedia* has been recognized as a full monotypic species, separate from the polytypic species *Gila robusta,* both currently accepted as valid species (Nelson et al. 2004). Minckley and DeMarais (2000) described a new species within the Gila River Basin, *Gila nigra.* It is similar to *Gila intermedia* in that it is another headwater-type chub, whereas *Gila robusta* is more often found in the mainstems of the major rivers within the Gila River Basin. *Gila intermedia* is the only species being addressed in this rule.

Distribution and Habitat. Historically, Gila chub have been recorded in approximately 43 rivers, streams, and spring-fed tributaries throughout the Gila River basin in southwestern New Mexico, central and southeastern Arizona, and northern Sonora, Mexico (Miller and Lowe 1967; Minckley 1973; Rinne 1976; DeMarais 1986; Bestgen and Propst 1989). Several populations may have originally had basin-wide distributions (e.g., Babocomari River and Santa Cruz River).

Gila chub commonly inhabit pools in smaller streams, springs, and cienegas (a desert wetland), and can survive in small artificial impoundments, such as man made ponds (Miller 1946; Minckley 1973; Rinne 1975). Gila chub are highly secretive, preferring quiet, deeper waters, especially pools, or remaining near cover including terrestrial vegetation, boulders, and fallen logs (Minckley 1973).

Riparian and aquatic communities across the southwest have been degraded or destroyed by human activities (Hastings 1959; Hastings and Turner 1965; Henderickson and Minckley 1984; Tellman et al. 1997). Humans have affected southwestern riparian systems over a period of several thousand years. Before the 1800s, indigenous people and missionaries used southern Arizona cienegas and riparian areas mostly for subsistence enterprises, including woodcutting, agriculture (including livestock grazing), and food and fiber harvesting.

Historically, beaver also used riparian areas in the Gila River basin almost anywhere perennial water and appropriate vegetation could be found. The activities of beaver are believed to have helped promote Gila chub habitat by inhibiting erosion and downcutting of stream channels (Parker et al. 1985), and increasing ponded water behind their dams. Beaver were extirpated (i.e. lost from a particular area) from a majority of their range by the late 1800s and are still not abundant or have not recolonized areas where they have been extirpated and were historically common (Hoffmeister 1986). For example, beaver were extirpated from the Santa Cruz and San Pedro Rivers in Arizona. Loss of this large mammal and the dams they constructed may have contributed to rendering reaches of some streams and rivers unsuitable as habitat for the Gila chub.

There was a significant human population increase in southern Arizona and northern Sonora, Mexico, in the early to mid 1800s (Tellman et al. 1997). New immigrants substantially increased subsistence and commercial livestock production and agriculture. By the late 1800s, many southern Arizona watersheds were in poor condition primarily due to uncontrolled livestock grazing, mining, hay harvesting, timber harvesting, and other management practices, such as fire suppression (Bahre 1991; Humphrey 1985; Martin 1975). The watershed degradation caused by these management practices led to widespread erosion and channel entrenchment when above-average rainfall and flooding occurred in the late 1800s (Bryan 1925; Martin 1975; Hastings and Turner 1980; Dobyns 1981; Hendrickson and Minckley 1984; Sheridan 1986; Bahre 1991; Webb and Betancourt 1992). These events led to long-term stream, cienega, and riparian habitat degradation throughout southern Arizona and northern Mexico. Physical evidence of cienega and other riparian area alterations can be found in the black organic soils of the drainage cut banks in places like the San Rafael Valley (Hendrickson and Minckley 1984), and San Pedro River (Hereford 1993). Although these changes took place nearly a century ago, these ecosystems have not fully recovered, and in some areas may never recover.

We estimate, based on collection records, historical habitat data, the 1996 Arizona Game and Fish Department (AGFD) Gila chub status review (Weedman et al. 1996), and information in our files documenting currently occupied habitat (see Table 1), that the Gila chub has been eliminated from approximately 85 to 90 percent of its formerly occupied habitat. Of 47 known populations (see Table 1), 29 are considered occupied (i.e., Gila chub have been documented within the last 5 years); 4 of these are newly established populations. All 29 populations are considered small, isolated, and subject to some form of threat; nonnative species are present in 27 of the populations (Table 1). Weedman (1996) categorized the status of the Gila chub populations into one of four categories: (1) Stable-secure-Gila chubs are common, data over the last 5 to 10 years show a stable reproducing population, no nonnative predatory or competitive species are present, no current or future land use threats were identified; (2) Stable-threatened-Gila chub are common to uncommon, potential

threats by nonnatives exist, some habitat-altering land and water uses were identified, or lack of recruitment (i.e., reproduction and survival of young) was detected within the population; (3) Unstable-threatened—Gila chub are rare, have limited distribution, predatory or competitive nonnatives are present, or the habitat is modified or threatened; (4) Extirpated (i.e., liminated)-Gila chub are no longer found within a particular river system. These four categories are reflected in the following discussion of the current status of Gila chub populations beginning with the next paragraph, and are summarized for each of the currently known occupied populations and critical habitat areas in Table 1; threat information is also summarized for each population in Table 1. Of the 29 currently occupied populations, we estimate that 10 can be considered stable-threatened and 19 are considered unstable-threatened; none are considered stable-secure.

TABLE 1.—GILA CHUB LOCATIONS (MAJOR DRAINAGES IN PARENTHESES) INCLUDING STATUS CLASSIFICATION [BASED ON WEEDMAN ET AL.1996; S=STABLE, U=UNSTABLE, T=THREATENED, E=EXTIRPATED (SEE DISTRIBUTION AND HABITAT SECTION)], THREATS (FROM SERVICE FILES), LAST YEAR OF DOCUMENTED OCCUPANCY, AND SOURCE OF OCCUPANCY INFORMATION. NO INFORMATION WAS AVAILABLE FOR CURRENT STATUS AND THREATS ON THE BLUE RIVER

Gila Chub Locations	Status classification	Threats	Last year occupancy confirmed	Source
Critical Habitat Areas				
Area 1: Upper Gila River				
Turkey Creek, NM (Gila River)	UT	Fire, grazing, nonnative species.	2005	P.C. Marsh, ASU in litt. 2005.
Eagle/East Eagle Creek (Gila River)	UT	Fire, grazing, nonnative speices.	2005	Marsh 2005.
Harden Cienega Creek (San Francisco River)	ST	Fire, grazing, nonnative species.	2005	McKell 2005.
Dix Creek (San Francisco River)	ST	Fire, grazing	2005	McKell 2005.
Area 2: Middle Gila River Area				
Mineral Creek/Devil's Canyon (Gila River)	UT	Fire, grazing, nonnative species.	2000	Weedman et al. 2000.
Area 3: Babocomari River				
O'Donnell Creek (Babocomari River)	UT	Fire, grazing, nonnative species.	2004	Dean Foster, AGFD, in litt. 2005.
Turkey Creek (Babocomari River)	E	Fire, grazing, nonnative species.	1991	Weedman et al. 1996.
Area 4: Lower San Pedro River				
Bass Canyon (San Pedro River)	ST	Fire	2003	Bob Rogers, The Nature Conservancy (TNC), in litt. 2005.
Hot Springs Canyon (San Pedro River)	ST	Fire	2004	Bob Rogers, TNC, in litt. 2005.
Redfield Canyon (San Pedro River)	ST	Fire, grazing, nonnative species.	2001	Bob Rogers, TNC, in litt. 2005.
Area 5: Lower Santa Cruz				
Cienega Creek (lower, Santa Cruz River)	UT	Fire, nonnative species, water use.	2005	Doug Duncan, in litt.
Cienega Creek (upper, Santa Cruz River)	ST	Fire, nonnative species	2005	Dean Foster, AGFD, in litt. 2005.
Mattie Canyon (Santa Cruz River)	UT	Fire, grazing, nonnative species.	2005	Jeff Simms, BLM, in litt. 2005.
Empire Gulch (Santa Cruz River)	UT	Fire, grazing,	2001	(67 FR 51948).
Sabino Canyon (Santa Cruz River)	UT	Fire, nonnative species	2005	Service files.
Area 6: Verde River				
Walker Creek (Verde River)	ST	Fire, grazing, nonnative species.	2005	Service files.
Red Tank Draw (Verder River)	UT	Fire, grazing, nonnative species.	2005	Service data.
Spring Creek (Verde River)	ST	Fire, grazing, nonnative species, residential development, water use.	2005	Service files.
Williamson Valley Wash (Verde River)	UT	Nonnative species residential development, water use.	2003	Bill Leibfried, in litt. 2005.
Area 7: Agua Fria				
Little Sycamore Creek (Agua Fria River)	ST	Fire, grazing, nonnative species.	2003	A .Silas, FS, pers. comm. 2005.
Sycamore Creek (Agua Fria River)	UT	Fire, grazing, nonnative species.	2005	Hedwall et al. 2005.
Indian Creek (Agua Fria River)	UT	Fire, grazing, nonnative species.	2005	J. Voeltz, AGFD in litt. 2005.
Silver Creek (Agua Fria River)	UT	Fire, grazing, nonnative species.	2005	D. Weedman, AGFD in litt. 2005.
Larry Creek (Agua Fria River)	ST	Fire, grazing	2003	Service files.

TABLE 1.—GILA CHUB LOCATIONS (MAJOR DRAINAGES IN PARENTHESES) INCLUDING STATUS CLASSIFICATION [BASED ON WEEDMAN ET AL.1996; S=STABLE, U=UNSTABLE, T=THREATENED, E=EXTIRPATED (SEE DISTRIBUTION AND HABITAT SECTION)], THREATS (FROM SERVICE FILES), LAST YEAR OF DOCUMENTED OCCUPANCY, AND SOURCE OF OCCUPANCY INFORMATION. NO INFORMATION WAS AVAILABLE FOR CURRENT STATUS AND THREATS ON THE BLUE RIVER—Continued

Gila Chub Locations	Status classification	Threats	Last year occupancy confirmed	Source
Lousy Canyon (Agua Fria River)	ST	Fire, grazing	2005	Service files.
Locations Not in Critical Habitat Areas				
Bonita Creek (Gila River)	ST	Fire, grazing, recreatoin, roads, water use, nonnative species.	2005	Heidi Blasius, BLM, pers. com. 2005.
Blue River (Gila River)	No information	No information	2000	Weedman et al. (1996) Minckley and DeMarais (2000).
Romero Canyon (Santa Cruz River)	UT Introduced	Fire, nonnative species	2005	AGFD 2005a.
Bear Canyon (Santa Cruz River)	UT Introduced	Fire, nonnative species	2005	AGFD 2005a.
Sheehy Spring (Santa Cruz River)	UT	Fire, nonnative species	2005	D. Foster, AGFD, in litt. 2005.
Babocomari River at T4 Spring (San Pedro River)	UT	Fire, nonnative psecies	2005	D. Foster, AGFD, in litt. 2005.
Double R Canyon (San Pedro River)	UT	Fire	2003	Bob Rogers, TNC, in litt. 2005.
Wildcat Canyon (San Pedro River)	UT	Fire	2003	Bob Rogers, TNC, in litt. 2005.
Post Canyon (Babocomari River)	E	Fire, grazing, nonnative species.	1989	Weedman et al. 1996.
Arroyo La Cieneguita, Mexico (San Pedro River)	E	Fire, grazing, nonnative species.	1990	Varela-Romero et al. 1992.
Los Fresnos River, Mexico (San Pedro River)	E	Fire, grazing, nonnaative species.	1990	Varela-Romero et al. 1992.
Localities Where the Gila chub is Believed Extirpated				
Aqua Fria River			1966	Weedman et al. 1996.
Big Chino Wash (Verde River)			1950	Weedman et al. 1996.
Birmingham Pond (Santa Cruz River)			1943	Weedman et al. 1996.
Cave Creek/Seven Springs Wash (Salt River)			1978	Weedman et al. 1996.
Fish Creek (Salt River)			1965	Weedman et al. 1996.
Monkey Spring (Santa Cruz River)			1968	Weedman et al. 1996.
Queen Creek (Gila River)			1938	Weedman et al. 1996.
Arnett Creek (Gila River)			1945	Weedman et al. 1996.
San Pedro			1912	Weedman et al. 1996.
San Simon River			1939	Weedman et al. 1996.
Santa Cruz River			1977	Weedman et al. 1996.
Haunted Canyon (Salt River)			1959	University of Michigan Museum of Zoology [UMMZ] collection record 176179.

In New Mexico, Gila chub likely inhabited numerous tributaries of the Gila River basin historically. These include Apache Creek, Catron County; Duck Creek, Grant County; San Francisco River, Catron County; San Simon Cienega, Hidalgo County; and Turkey Creek, Grant County (Rinne 1969, 1976; Hubbard et al. 1979; Bestgen and Propst 1989; Sublette et al. 1990; Propst 1999). All of these populations are now extirpated (Bestgen and Propst 1989), with the exception of Turkey Creek (Propst 1999; P. C. Marsh, Arizona State University [ASU] in litt. 2005). We consider Turkey Creek unstable-threatened because the population was recently decimated by wildfire, and nonnative species are present (B. Thompson, New Mexico Game and Fish Department [NMGF], in litt. 2005).

In Arizona, Gila chub are known to have occupied portions of the Salt, Verde, Santa Cruz, San Pedro, San Carlos, San Simon, San Francisco, and Agua Fria drainages in addition to smaller tributaries of the mainstem Gila River. Small remnant populations remain in most of these drainages with the exception of the Salt and San Simon Rivers, where all known populations have been extirpated (Weedman et al. 1996; Propst 1999).

In the Verde River basin, Walker and Spring creeks, located in Yavapai County, chub populations are considered stable-threatened populations; the population in Williamson Valley Wash, also in Yavapai County, is considered unstable-threatened. The Santa Cruz River has five tributaries with extant populations of Gila chub, which include Bear, Romero, and Sabino canyons (Pima County) that were established this year (these are considered unstable-threatened); Sheehy Spring (Santa Cruz

County) has an unstable-threatened population (Arizona Game and Fish Department [AGFD] 2005a); and Cienega Creek (Pima and Santa Cruz Counties) has a stable-threatened population of Gila chub. The San Pedro River Basin has four extant, stable-threatened populations: Bass, Hot Springs, and Redfield canyons (Graham and Pima Counties), and O'Donnell Canyon (Santa Cruz County; B. Rogers, The Nature Conservancy (TNC), in litt. 2005; D. Foster, AGFD in litt. 2005). There is an unstable-threatened population of Gila chub at T4 Spring in the Babocomari River (Santa Cruz and Cochise Counties; D. Duncan, U.S. Fish and Wildlife Service in litt. 2003). The San Carlos River and the Blue River are tributaries to the Gila River (Gila and Graham Counties) on San Carlos Apache tribal lands. We are aware that Gila chub are extant on the Reservation, but we do not have information to document the status of Gila chub in those drainages.

The San Francisco River has two tributaries with extant populations, Dix Creek in Greenlee County, Arizona, and Harden Cienega in Greenlee County, Arizona, and Grant County, New Mexico. Based on surveys in June 2005, these populations appear to be doing well and can be characterized as stable-threatened (McKell 2005). The Agua Fria River has two tributaries with stable-threatened populations, Silver and Sycamore creeks (Yavapai County), as well as two unstable-threatened populations in Little Sycamore Creek and Indian Creek (Yavapai County) (Weedman et al. 1996; A. Silas, U.S. Forest Service [FS], pers. comm. 2005). In addition, there are two introduced populations in the Agua Fria River, Larry Creek and Lousy Canyon (Yavapai County); both appear to be stable-threatened based on recent surveys. Populations of all of the Aqua Fria populations may have been affected by wildfires that occurred in summer 2005 (Knowles et al. 2005). Two tributaries of the Gila River in Arizona have extant populations of Gila chub: Eagle Creek (Graham and Greenlee Counties) has an unstable-threatened population, and Bonita Creek (Graham County) has a stable-threatened population (Weedman et al. 1996; Marsh 2005; H. Blasius, Bureau of Land Management (BLM), in litt. 2005).

In Mexico, Gila chub historically occupied significant portions of the Santa Cruz and San Pedro river basins. The current known distribution of Gila chub in Mexico has been reduced to two small spring areas, Cienega los Fresnos and Cienega la Cienegita, adjacent to the Arroyo los Fresnos (tributary of the San Pedro River), within 1.2 mi (2 km) of the Arizona-Mexico border (Varela-Romero et al. 1992). No Gila chub remain in the Mexican portion of the Santa Cruz River basin (Weedman et al. 1996).

Establishment of new populations of Gila chub has been attempted in six sites in Arizona; five sites remain extant. Lousy Canyon and Larry Creek (Yavapai County) are tributaries to the Agua Fria River that were stocked with 200 Gila chub from Silver Creek on July 6, 1995. Recent surveys indicate that these populations are doing well, with good recruitment. Gardner Canyon (Cochise County) was stocked with 150 Gila chub from Turkey Creek (Santa Cruz County) in July 1988. Follow up surveys in May 1995 did not detect Gila chub in Gardner Canyon; 2005 surveys also did not detect the species (AGFD 2005a). In May 2005, Gila chub that were salvaged from Sabino Canyon during the Aspen fire in 2003 were returned to Sabino Canyon and introduced into two other streams in the Santa Catalina Mountains: approximately 350 Gila chub were stocked into Sabino Canyon, 120 into Romero Canyon, and 85 into Bear Canyon (all in Pima County; AGFD 2005a). The status information presented above is summarized in Table 1.

Previous Federal Actions

For more information on previous Federal actions concerning the Gila chub, refer to the proposed rule to list the Gila chub as endangered with critical habitat published in the **Federal Register** on August 9, 2002 (67 FR 51948). On May 18, 2004, the Center for Biological Diversity filed a complaint against the Department of the Interior because the Service had not published a final rule for the Gila chub in a timely manner. On August 3, 2004, the United States District Court of Arizona ordered that we, via a stipulated settlement agreement, submit for publication to the **Federal Register**, a final rule by October 21, 2005 (*Center for Biological Diversity* v. *Norton*, No. CV 04–2061 TUC CRP). On August 31, 2005 (70 FR 51732), we published a notice to reopen the public comment period on the August 9, 2002, proposed rule for 30 days and announce the availability of the draft economic analysis, draft environmental assessment, and hearing dates for the proposed listing and critical habitat designation for the Gila chub.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed listing and designation of critical habitat for the Gila chub on August 9, 2002 (67 FR 51948), and in our notice to reopen the comment period (August 31, 2005; 70 FR 51732). We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule. We also requested information pertaining to any actions that affect the Gila chub, its current status, distribution, and threats, and the status of nonnative fishes in the historical range of Gila chub. We requested this information in order to make a final listing determination based on the best available scientific and commercial data. We published newspaper notices inviting public comment and announcing the public hearings in the following newspapers in Arizona and New Mexico: Albuquerque Tribune, Albuquerque Journal, the Arizona Republic, Daily Courier (Prescott), Santa Fe New Mexican, Silver City Daily Press, Sierra Vista Herald, Tucson Citizen, Arizona Daily Star (Tucson), the Bulletin (Sonoita), Eastern Arizona Courier (Safford), the Verde Independent, Camp Verde Bugle, and the Copper Country News (Globe). On September 13, 14, and 15, 2005, we held public hearings in Silver City, New Mexico; Safford, Arizona; and Camp Verde, Arizona, respectively, to solicit comments on the proposed rule.

During the first comment period that opened on August 9, 2002, and closed on October 9, 2002, we received 97 pieces of correspondence (e-mails, letters, and faxes). Of these, we received 5 comments from Federal agencies, 1 from a State representative, and 91 from organizations or individuals. Thirty-one of the comments were requests for public hearings of which 26 concerned Willow Creek. During the second comment period that opened on August 31, 2005, and closed on September 30, 2005, we received 29 comments. Of these latter comments, 6 were from peer reviewers, 1 from another nation, 2 from Federal agencies, 3 from State agencies, and 17 from organizations or individuals.

Of the written comments received during the first comment period, 40 supported, 17 were opposed, and 44 included comments or information but did not express support for or opposition to the proposed listing and critical habitat designation. Of the written comments received during the second comment period, 18 supported, 0 were opposed, and 10 included comments or information but did not express support for or opposition to the proposed listing and critical habitat designation. We received a number of comments concerning Willow Creek in

Catron County, New Mexico. Willow Creek is neither occupied nor historical habitat for Gila chub and was not part of the proposed critical habitat determination. In addition, there are no plans to establish a population of Gila chub in Willow Creek. Therefore, these comments will not be addressed further. All substantive information written and verbal, provided during the public comment periods, either has been incorporated directly into this final determination or is addressed below. We also wish to recognize that the Mexican Federal Government commented on the proposed rule; the Director de Conservacíon de la Vida Silvestre, Secretario de Medio Ambiente y Recursos Naturales, did not provide specific comment, but generally supported the listing. Similar comments are grouped together by issue.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from eight knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles, and that represented Federal agencies, State agencies, university researchers, and private consultants. We received responses from six of the peer reviewers; two of these were from State biologists via the Arizona and New Mexico Game and Fish Departments and were not specifically identified as peer review, and are addressed below as ''State Comments.'' Five of the six peer reviewers, including both State wildlife agencies, concurred with our methods and conclusions, supported our determination that the species is endangered, and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. A sixth peer reviewer suggested that we may have overestimated the extinction threat to Gila chub, and recommended that we consider listing the species as threatened. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

(1) *Comment:* Limiting critical habitat to only those areas that are occupied will not achieve the purposes of the Act and satisfy the definition of critical habitat, particularly when the proposed rule states that stabilization of the Gila chub at its present population level and distribution will not achieve conservation. Critical habitat should be expanded to include unoccupied areas that provide connectivity between populations to allow gene flow and repopulation of formerly occupied suitable habitat.

Our Response: Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographical area occupied by the species on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection. In our critical habitat designation, we use the provisions outlined in section 3(5)(A) of the Act to evaluate those specific areas that contain the features that are essential to the conservation of the species and that may require special management considerations or protections. Critical habitat designation for the Gila chub includes many areas of known occupancy that have features that are essential to the conservation of the species, as well as one unoccupied area that we consider essential to the conservation of the Gila chub because of its connection with or proximity to known occupied areas. This is discussed in further detail in the ''Justification for Including Unoccupied Areas'' section below. We believe we have considered and applied to this designation the best available scientific information regarding the Gila chub. Thus, while not all areas important for potential Gila chub recovery were proposed as critical habitat, we believe this designation defines those areas that are essential. We also acknowledge that critical habitat can contribute to the overall recovery strategy for a listed species, but does not, by itself, achieve recovery. We encourage Federal and State agencies, Tribal governments, municipalities, private groups, and landowners to work with us as we develop a recovery plan for the Gila chub and to continue to work towards establishing additional populations and aid in the recovery of the species. As discussed in this rule, even if an area is not designated as critical habitat, it does not mean that area is not important for Gila chub recovery.

(2) *Comment:* Listing the Gila chub may not be supported because the Service's assertion that the Gila chub has lost 85–90 percent of its habitat is based on the assumptions that the Gila chub was distributed throughout contiguous river reaches containing suitable habitat, that status information indicates that 60 percent of the currently known populations are stable or secure, and that data necessary to determine status (i.e. quantitative abundance estimates and accurate historical records) for Gila chub are lacking. The Service should consider that the species may better meet the definition of threatened.

Our Response: We disagree and refer to the ''Background'' section above for detailed information on our estimate of habitat loss. We also note that in some cases, entire rivers that were habitat for Gila chub have largely disappeared or been so degraded they no longer support the species (e.g., the Santa Cruz and San Pedro Rivers; Weedman et al. 1996; Tellman et al. 1997). The Gila chub has been eliminated from 12 streams (see Table 1). Sabino Creek would have been lost due to wildfire had it not been salvaged by Service, AGFD, and the FS in 2003, and three additional populations were salvaged this year in response to wildfires; the status of these populations post-fire has not yet been ascertained. Only two populations are free from nonnative species, and all populations are small and isolated and thus at risk (Fagan et al. 2002). The past decline, current threats, and status of Gila chub are well documented and reflected in this final rule.

(3) *Comment:* Conservation actions since the proposed rule was published have been insufficient to improve the status of the species to the point it is no longer endangered or threatened, indicating that existing regulatory protections, including concerted efforts by the States to conserve the Gila chub, are not sufficient to prevent its extinction.

Our Response: We agree that the status of the Gila chub has not improved since the publication of the proposed rule, despite efforts to conserve the species. However, we value the cooperative conservation partnerships that have been formed between Federal and State agencies, municipalities, and the public to work to improve the status of the Gila chub, and we recognize that the decline of the species occurred over a number of years and that it would be difficult to address all threats facing the species in the short amount of time since the proposed listing. We will continue to pursue such partnerships and conservation projects involving the Gila chub following this final rule and as we develop a recovery plan. In ''Inadequacy of Existing Regulatory Mechanisms'' (Factor D) below, we discuss existing regulatory mechanisms as they relate to the protection being afforded to the Gila chub.

(4) *Comment:* Listing the Gila chub will alienate stakeholders that otherwise would have been amenable to conserving the species because the Act is so restrictive. Conservation agreements between the various

stakeholders would be a more effective method to conserve the Gila chub.

Our Response: As discussed above, we agree that cooperative conservation utilizing partnerships between Federal and State agencies, municipalities, and the public is a good approach to conservation, and we have pursued such partnerships on numerous projects involving the Gila chub and will continue these partnerships after this final rule to list the chub as endangered is effective. However, we are required to list a species as endangered if we determine that the species is likely to become extinct throughout all or a significant portion of its range. After evaluating the current status of the species and threats to extant populations in the five factor analysis below, we have determined that the Gila chub is endangered.

(5) *Comment:* The Service needs to provide a more explicit explanation of the primary constituent elements (PCEs) that exist in each segment of critical habitat.

Our Response: All of the areas that we have designated as critical habitat have one or more of the PCEs. We have provided in our area descriptions (below), those primary constituent elements that are present in each of the critical habitat areas.

(6) *Comment:* The confusing taxonomic history of the Gila chub has led to errors in the Service's estimation of its current and former range. The Service has thus likely overstated the species' historic range, inflated the degree to which the species has declined, and thus exaggerated its need for listing.

Our Response: Gila intermedia is part of the *Gila robusta* species complex that includes six other taxa: *G.cypha, G. elegans, G. nigra, G. robusta, G. r. jordani,* and *Gila seminuda* (Gerber et al. 2001); all of these species have experienced declines and face similar threats. The evolution of the species in the complex is novel in some respects, and research on the complex has led to insight about the various ways in which speciation occurs (Gerber et al. 2001; Minckley and DeMarais 2000). However, we have found that the taxonomy of the Gila chub has come to be well understood (Minckley and DeMarais 2000), and that Gila chub as a species is valid and qualifies as a taxon that may be listed under the Act (50 CFR 424.02(k)). As Minckley and DeMarais (2000) illustrate, the three forms of *Gila* represent distinct species that have consistently and repeatedly been identified in the same streams; based on this work, we are confident of our evaluation of the status of the species, its formerly occupied range, and its current distribution. Our consideration of Gila chub with regard to its status and consideration for listing has evolved as more information has become available regarding its biology, status, and threats, which is reflected in this final rule. We note that the status of the Gila chub has appreciably declined over the last 25 years, and we have information to document new threats facing the species, such as frequent catastrophic fires, also noted by both AGFD and NMGF in their comments on the proposed rule (B. Broschied, AGFD, in litt. 2005; B. Thompson, NMGF, in litt. 2005).

(7) *Comment:* Since the Gila chub resembles closely related taxa (i.e., the roundtail and headwater chubs), its listing will cause substantial enforcement problems for enforcing ''take.'' This could potentially cause significant economic impact to stakeholders, especially if the Service lists these other forms under similarity of appearance as defined in Section 4(e) of the Act. This problem is confounded because these forms also apparently interbreed.

Our Response: Although the Gila, roundtail, and headwater chubs are closely related and appear similar, we find no need for listing the latter two under similarity of appearance for several reasons. The primary reason is that these species occur in geographically separate places. As Minckley and DeMarais (2001) stated, ''persistent parapatry [geographic separation] of morphologically distinguishable *robusta, intermedia,* and *nigra* [roundtail, Gila, and headwater chubs], has been documented, confirmed, and reconfirmed by collections since the 1920s * * * In no instance was any two of the three caught at the same locality.'' Because roundtail chub is considered a sport fish in Arizona, we have considered unintended harvest of Gila chub as a potential threat to the species under our five factor analysis below. We do not believe this represents a significant threat to Gila chub because AGFD prohibits the collection of Gila chub without a permit, and allows possession of only 1 roundtail chub over 13 inches in total length (AGFD 2005c). Gila chub do not achieve this size, thus the existing AGFD regulations adequately protect Gila chub from this threat. Although the headwater chub is thought to be of hybrid origin from hybridization of related chubs in geologically recent times (Minckley and DeMarais 2001), we know of no evidence that the current three forms hybridize in nature.

(8) *Comment:* Listing the Gila chub may not be the most effective method for removing threats; the States have primary authority over regulating all non-listed aquatic organisms, including nonnative species, a primary threat to the Gila chub.

Our Response: We realize that there are existing authorities which could and often do provide protection for the Gila chub, and the States have been and will continue to be a key partner in the conservation of the Gila chub. However, we have determined that the protection afforded by existing regulatory mechanisms is insufficient to preclude the listing of the Gila chub (see Inadequacy of Existing Regulatory Mechanisms (Factor D) below).

General Comments Issue 1: Biological Concerns

(9) *Comment:* The lateral extent of critical habitat should be expanded to include the 100-year floodplain or entire watersheds.

Our Response: Critical habitat includes the stream channels within the identified stream reaches defined by upstream and downstream boundaries, as well as areas within these reaches potentially inundated during high flow events. Critical habitat also includes the area of bankfull width plus 300-feet on either side of the banks. 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). 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). This 300-foot width defines the lateral extent of those areas that contain the features that are essential to the species' conservation.

We determined the 300-foot lateral extent for several reasons. First, the implementing regulations of the Act require that critical habitat be defined by reference points and lines as found on standard topographic maps of the area (50 CFR 424.12). Although we considered using the 100-year floodplain, as defined by the Federal Emergency Management Agency (FEMA), we found that it was not included on standard topographic maps, and the information was not readily available from FEMA or from the U.S. Army Corps of Engineers for the areas designating critical habitat. We suspect this is related to the remoteness of various stream reaches. Therefore, we selected the 300-foot lateral extent, rather than some other delineation, for three biological reasons: (1) The

biological integrity and natural dynamics of the river system are maintained within this area (i.e., the floodplain and its riparian vegetation provide space for natural flooding patterns and latitude for necessary natural channel adjustments to maintain appropriate channel morphology and geometry, store water for slow release to maintain base flows, provide protected side channels and other protected areas, and allow the river to meander within its main channel in response to large flow events); (2) conservation of the adjacent riparian area also helps provide essential nutrient recharge and protection from sediment and pollutants; and (3) vegetated lateral zones are widely recognized as providing a variety of aquatic habitat functions and values (e.g., aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality (see U.S. Army Corps of Engineers' final notice concerning Issuance and Modification of Nationwide Permits, March 9, 2000, 65 FR 12818–12899). Please see the section entitled ''Critical Habitat'' below for more information.

(10) *Comment:* Using a 300-foot distance from bankfull width as a lateral extent of critical habitat captures areas in some segments that are outside the floodplain, and thus should not be considered essential to Gila chub.

Our Response: In the proposed rule, critical habitat segments were proposed to include ''the stream channels within the identified stream reaches and areas within these reaches potentially inundated during high flow events.'' Our intent is to capture areas that correspond to the 100-year floodplain. We determined that the 300 foot distance from the bankfull width was the best method to define this area. As described elsewhere in this rule, we find that all the critical habitat areas contain sufficient PCEs to provide for one or more of the life history functions of the Gila chub. We have also refined the designation, based upon comments received, to define more precisely the boundaries of the critical habitat designation.

(11) *Comment:* Critical habitat should be expanded to include additional occupied habitat in Indian Creek, Little Sycamore Creek, Sycamore Creek, and Bonita Creek; critical habitat in Spring Creek should be contracted to exclude unsuitable habitat at both ends.

Our Response: We have slightly adjusted a number of the critical habitat stream segments, both to correct errors and to better capture areas of occupied habitat that contain the features that are essential to the conservation of the species. Also, Bonita Creek, Blue River, and portions of Spring and Cienega creeks have been excluded from the designation pursuant to 4(b)(2) of the Act.

(12) *Comment:* Birds or other native predators may be a threat, as opposed to anthropogenic (man made) causes.

Our Response: Although a number of piscivorous birds occur throughout the range of the Gila chub, such as the great blue heron (*Ardea herodias*) and belted kingfisher (*Ceryle alcyon*), we found no information to support bird predation as a significant threat to Gila chub. Bird predation can, however, be a significant concern at fish hatcheries (U.S.D.A. Animal Plant Health Inspection Service 1997), where fish are concentrated in ponds or raceways, and thus may be a consideration in recovery actions for Gila chub that require use of such facilities.

(13) *Comment:* Gila chub is a member of a species assemblage in the genus *Gila* along with six other species, all of which warrant listing as endangered under the Act.

Our Response: We are aware that *Gila intermedia* is part of a species complex. We also note that for taxonomically complex groups that warrant conservation, species-based approaches may be inadequate, and new approaches that conserve evolutionary processes that generate taxonomic biodiversity may be a preferable conservation strategy (Ennos et al. 2005). However, all of the fishes of the *Gila robusta* species complex are currently listed as endangered under the Act, with the exception of *G. nigra* and *G. robusta* (U.S. Fish and Wildlife Service 2005a). With regard to these two unlisted species, we published a positive 90-day finding on a petition to list a distinct population segment of *G. robusta* in the lower Colorado River basin, and to list *G. nigra* throughout its range, on July 12, 2005 (70 FR 39981). *G. robusta* is also part of a multistate conservation agreement that addresses conservation of the species throughout its range (Utah Department of Natural Resources 2004).

(14) *Comment:* The threats to Gila chub are largely unsubstantiated; much of the literature is overly general in nature and is not site- or species-specific, and thus the listing of Gila chub is not warranted.

Our Response: The threats to Gila chub are well documented (see ''Summary of Factors Affecting the Species'' section below). The current status of the species is that it has been eliminated from approximately 85 to 90 percent of its formerly occupied habitat as a direct result of these threats (Weedman et al. 1996), and it currently exists as a collection of very small, isolated, and highly fragmented populations (Weedman et al. 1996; Service files presented in Table 1). In some cases, such as Sheehy Spring, a population exists in a habitat not much larger than a common backyard swimming pool. Because of this, the species is much more susceptible to threats such as predation and competition from nonnative species (Dudley and Matter 2000), habitat destruction from various land use practices (Weedman et al. 1996), stochastic events such as wildfire (Knowles et al. 2005), and an increased risk of extinction due the high degree of fragmentation of the remaining populations (Fagan et al. 2000). Although some of our citations are not specific to these species or the geographic area, the citations offer evidence that certain threats exist because similar examples have been documented elsewhere, and based on biological principles and effects observed in other fishes, we can draw reasonable conclusions about what we would expect to happen to this species were it not listed.

(15) *Comment:* The critical habitat designation is overly broad because it includes areas that are unoccupied and that have not been shown to be essential to the conservation of the species. Eagle, Turkey, Post, and Little Sycamore creeks are not occupied and so should not be included in critical habitat without a justification that these areas are essential to the conservation of the species. Critical habitat areas are not recovery areas, and critical habitat does not, in itself, lead to recovery of a species.

Our Response: Gila chub were documented in Eagle Creek in 2005 (Marsh 2005), and in Little Sycamore Creek in 2005 (A. Silas, FS, pers. comm. 2005). In this final rule, all of the critical habitat areas have been documented as occupied by Gila chub within the last 5 years, with the exception of one: Turkey Creek (AZ). Gila chub were last detected in Turkey Creek in 1991. This tributary is connected to O'Donnell Creek, which was documented as occupied in 2004 (D. Foster, AGFD, in litt. 2005), and while we believe this stream can be recolonized naturally by Gila chub in high water years, we are also working with the AGFD to reestablish Gila chub in this stream. Turkey Creek contains sufficient PCEs to provide for one or more of the life history functions of the Gila chub. We provide further information on our determination that this area is essential to the conservation

of the species, pursuant to the definition in section 3(5)(A)(ii) of the Act, in the ''Justification for Including Unoccupied Areas'' section below. We are not including Post Canyon in the final designation (see the ''Summary of Changes'' section below).

(16) *Comment:* The term ''banks'' needs to be defined in the description of critical habitat.

Our Response: As mentioned in response to comment 9 and 10 above, and discussed in the ''Critical Habitat'' discussion below, we defined ''bank'' to mean the line at which the stream is at ''bankfull'' discharge, as defined by Rosgen (1996), i.e., the flow at which water begins to leave the channel and move into the floodplain. While a function of the size of the stream, bankfull width is a consistent feature related to the formation, maintenance, and dimensions of the stream channel. Bankfull discharge is a quantifiable measure that is essential to classifying streams, to reducing variability in diagnosing stream impairment, and to determining management objectives for a given stream reach (Rosgen 1996).

(17) *Comment:* The Central Arizona Project (CAP) canal does not result in the transfer of nonnative species into the Gila River Basin.

Our Response: There is a large body of research to support the contention that the CAP is a potential vector for nonnative aquatic species (U.S. Fish and Wildlife Service 2001a). Additionally, one nonnative species has been documented to have entered the Gila River Basin through the canal: striped bass (*Morone saxatalis*); another, pacu (*Piaractus brachypomus*) has invaded the Gila River Basin, potentially through the CAP; and numerous nonnative species appear to have increased their range within the Gila River Basin via the canal (U.S. Fish and Wildlife Service 1999a, 1999b, 2001a, 2001b).

We completed a section 7 consultation with the Bureau of Reclamation (Reclamation) on the effects of the CAP, and the resulting biological opinion addressed the transfer of nonnative species into the Gila River drainage (U.S. Fish and Wildlife Service 2001b). Recognizing the potential of the CAP to transfer nonnative species into the Gila River Basin and threaten listed native fish populations, Reclamation proposed to build a number of fish barriers to protect native fish populations in the Gila River Basin as a conservation measure. Building a concrete barrier on the lower segments of tributary streams is thought to prevent nonnative fish species from moving upstream, which protects the native fish populations above the barrier while allowing downstream passage of native fish. Future planned barriers include one on Bonita Creek, which is occupied by the Gila chub.

(18) *Comment:* The rule does not make clear what specific conservation actions would be necessary in proposed reaches of critical habitat to improve them to desired conditions for Gila chub.

Our Response: All of the stream reaches included in the critical habitat designation contain sufficient PCEs to provide for one or more of the life history functions of the Gila chub and all but one area is considered occupied by Gila chub. During the development of a recovery plan for the Gila chub, specific voluntary actions will be identified to reach recovery, including measures to help maintain and improve habitat conditions for the Gila chub. For example, some measures may include restoring a natural flow regime, maintaining or establishing bank stability, providing instream cover such as downed logs and undercut banks, and maintaining healthy riparian vegetation and good water quality conditions (i.e. temperature, pH, few contaminants, low turbidity, adequate levels of dissolved oxygen).

(19) *Comment:* What factual scientific data is available to verify that Gila chub was native to the Verde River?

Our Response: Gila chub were first reported as being collected from the Verde River Basin in 1890 at Chino, Arizona (Weedman et al. 1996). Collection records since that time include the following streams in the basin, some of which are still occupied by the species (see ''Background'' section above): Big Chino Wash, Oak Creek, Spring Creek, Walker Creek, Red Tank Draw, and Williamson Valley Wash (Weedman et al. 1996).

(20) *Comment:* It is unclear how designating critical habitat will ensure that these areas will be suitable for future introductions of Gila chub.

Our Response: Designating critical habitat serves to identify the areas that contain the features that are essential to the conservation of the species, thus alerting Federal agencies to consider the species' conservation in design and implementation of the agencies' management actions. Designating critical habitat likewise provides guidance to non-Federal landowners on why these areas need special management and protection, as well as what activities are, or are not, likely to adversely affect critical habitat, see ''Section 7'' section below. Also, section 4(f) of the Act (16 U.S.C. 1533(f)) requires the preparation of a recovery plan for each listed species. Recovery plans provide guidance on what actions, including habitat maintenance and restoration, are necessary to recover a species. Designation of critical habitat can play an important role in providing a summary of the scientific knowledge of the habitat needs of a species. Likewise, designation of critical habitat helps the recovery process by providing information on how actions might impact the habitat of the species and information that can be used to develop a recovery plan.

(21) *Comment:* The proposed rule does not present sufficient evidence to conclude that the fish in Bonita Creek are Gila chub.

Our Response: The population of *Gila* in Bonita Creek is recognized as Gila chub as described by Weedman et al. (1996) and Minckley and DeMarais (2000).

(22) *Comment:* The primary threat to Gila chub in Bonita Creek is nonnative aquatic species. The wells and infiltration gallery operated by the City of Safford on Bonita Creek create a barrier to the upstream migration of nonnative species, protecting Gila chub, and should probably be enhanced. The city's activities likely are the reason a population of Gila chub persists in Bonita Creek.

Our Response: We agree. While the city's diversion of water does eliminate some stream habitat for the Gila chub, the barrier it creates to the upstream movement of a host of nonnative fishes from the mainstem Gila River is a conservation benefit to the species, and has likely contributed to the long-term persistence of the Bonita Creek population. We are working with Reclamation to create a physical barrier in Bonita Creek to provide long-term protection to Bontia Creek from invasion of nonnative fishes located downstream of this chub population.

(23) *Comment:* Disconnected reaches such as Mineral Creek do not support the purported goal that critical habitat provides connecting habitats between populations of Gila chub that are separated from each other.

Our Response: As stated in our proposed rule (August 9, 2002; 67 FR 51948), connectivity is one of several important considerations in selecting areas included in this critical habitat designation. Also included are factors specific to each river system, such as presence of the PCEs, protection of genetic diversity, and representation of major portions of the species' historical range.

(24) *Comment:* The lower segment of Cienega Creek proposed as critical habitat and also defined in the August 31, 2005, notice (70 FR 51732) does not

contain the PCEs to support Gila chub, and the Service has incorrectly stated that this segment is entirely county-owned. Portions of this segment are privately owned, there are sand and gravel mining operations that do not contain the PCEs to support the species, and the segment is unoccupied by the species.

Our Response: Gila chub were collected in lower Cienega Creek in 2002 (AGFD Heritage Data Management System) and documented in this critical habitat segment in 2005 (see Table 1), and we have found that the segment does contain the PCEs necessary to support the species. Sand and gravel mines do not contain the PCEs for the Gila chub and are not considered to be critical habitat. We have corrected the land ownership information to reflect the private ownership of parcels within this segment, and we have excluded privately owned lands in Cienega Creek due to the potential economic impacts identified in our economic analysis (see ''Exclusions Under Section 4(b)(2) of the Act'' section below).

General Comments Issue 2: Procedural and Legal Compliance

(25) *Comment:* Designation of critical habitat and species reintroductions will lead to undue restrictions on private landowners, and will negatively impact residents of nearby local communities. For example, designating critical habitat in Spring Creek would adversely affect the nearby community by interfering with road and bridge maintenance, flood damage repair, groundwater withdrawal for municipal use, treated effluent discharge to the creek from the community, and the recreational opportunities of nearby residents.

Our Response: In general, private landowners are not affected by critical habitat. Critical habitat directly affects only Federal actions. Pursuant to section 7 of the Act, Federal agencies ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. Individuals, organizations, States, local and Tribal governments, and other non-Federal entities are only affected by the designation of critical habitat if their actions occur on Federal land; require a Federal permit, license, or other authorization; or involve Federal funding (see ''Effect of Critical Habitat Designation'' section below). While many of the actions mentioned in the comment would involve a Federal action agency, and may trigger a section 7 consultation because Spring Creek is currently occupied, there is also a requirement to consult under section 7 for affects to the listed species alone, regardless of whether critical habitat is designated. We have also analyzed the impact of designating critical habitat on small entities, including small communities, in our draft environmental assessment and draft economic analysis. Based on these analyses, we have concluded that, although the designation of critical habitat will result in measurable social and economic effects to small communities, these will not be significant. We have also excluded privately owned lands in Spring Creek and in Cienega Creek due to potential economic impacts as identified in our economic analysis (see ''Exclusions Under Section 4(b)(2) of the Act'' section below).

(26) *Comment:* The Gila chub provides no sport fish opportunity and is of no economic value, so why should we protect it?

Our Response: Congress has decided that any species threatened with extinction should be protected, without regard to economic value of the species or economic impact of the designation.

(27) *Comment:* Adding Gila chub to the endangered species list will deprive citizens of their right to vital water supplies.

Our Response: Listing the Gila chub under the Act requires that Federal agencies consult with the Service on activities involving Federal funding, a Federal permit, Federal authorization, or other Federal actions. Formal consultation (under section 7 of the Act) is required when activities are likely to adversely affect the Gila chub or its designated critical habitat. Additionally, private citizens are prohibited from engaging in any activity that would result in ''take'' of a listed species (see the ''Available Conservation Measures'' section below for further information). Landowners may obtain a permit to ''take'' Gila chub incidental to otherwise lawful activities, such as withdrawing water from a stream, through a 10(a)(1)(B) permit and Habitat Conservation Plan. We note also that surface water flow within the Gila River basin is fully appropriated and subject to ongoing adjudication (U.S. Fish and Wildlife Service 2005b). The Arizona Department of Water Resources regulates surface water withdrawal via the Public Water Code, a law that provides that a person must apply for and obtain a permit in order to appropriate surface water. Groundwater pumping also has limited regulation under the Arizona Groundwater Code. However, the legal relationship between groundwater and surface water has not been established in Arizona. The New Mexico Office of the State Engineer administers groundwater and surface water rights in New Mexico. The New Mexico State Engineer's approval is required for almost every use of water in New Mexico. For example, permission is needed to make a new appropriation, drill a well, divert surface water, or change the place or purpose of use of an existing water right. Thus, any new claims on surface water or groundwater water in either State would also be subject to the permitting authority of these respective agencies.

(28) *Comment:* The Service has failed to make a 12-month finding on the Gila chub, violating the Act.

Our Response: A 12-month finding may be published concurrently within a proposed rule (50 CFR 424.14(b)(3)(ii)). The proposed rule for the Gila chub published in the **Federal Register** on August 9, 2002, constituted our 12-month finding (67 FR 51948).

(29) *Comment:* The Service needs to provide a more explicit explanation of the PCEs that exist in each segment of critical habitat.

Our Response: All of the areas that we have designated as critical habitat have one or more of the primary constituent elements. We have described in our area descriptions below those primary constituent elements present in each of the critical habitat areas.

(30) *Comment:* Areas proposed as critical habitat already have adequate management and protection. The Service should consider excluding these areas, and should also consider possible exclusions of Bonita Creek given the economic importance to the City of Safford and nearby communities.

Our Response: In our critical habitat designation we use the provisions outlined in section 3(5)(A) of the Act to evaluate those specific areas defined by the features essential to the conservation of the species that may require special management considerations or protections. In our proposed rule (August 9, 2002; 67 FR 51948), we excluded Sheehy Spring in the San Rafael Valley and Wildcat and Double R canyons on the Muleshoe Preserve because these lands were managed under a conservation easement held by The Nature Conservancy and managed under the Muleshoe Ecosystem Management Plan, respectively (see ''Exclusions Under Section 4(b)(2) of the Act'' section below). Additionally, we have excluded the Blue River and part of Bonita Creek on lands of the San Carlos Apache Tribe from the designation of critical habitat for the Gila chub pursuant to section 4(b)(2) of the Act as discussed below (see ''Exclusions Under Section 4(b)(2) of the

Act'' section below). The San Carlos Apache Tribe has completed a fisheries management plan that includes the Gila chub and provides special management for this species. We have also formed a partnership with the City of Safford, BLM, and Reclamation to manage lands on Bonita Creek downstream of the San Carlos Apache Tribe. Based on this partnership, we have excluded Bonita Creek downstream of San Carlos Apache lands pursuant to section 4(b)(2) of the Act as discussed below (see ''Exclusions Under Section 4(b)(2) of the Act'' section below).

(31) *Comment:* The Service has not used the best scientific and commercial data available; for example, Weedman (1996) makes no mention of Mineral Creek, and the Service's proposed rule has only a vague reference to a survey in 2000 that found Gila chub but not in the reach identified as critical habitat.

Our Response: With regard to presence/absence information, we use peer-reviewed literature, collection records, unpublished reports, or personal communications with qualified field biologists. In this case, we have several pieces of information to support the occupancy of Mineral Creek by Gila chub. Gila chub were first collected from Mineral Creek in 1993 by the AGFD (AGFD Native Fish Database), although this was not reported by Weedman et al. (1996). Gila chub were first reported from Mineral Creek in peer-reviewed literature in 2000 (Minckley and DeMarais 2000). The AGFD again surveyed Mineral Creek in 2000 and reported collecting Gila chub (Weedman 2000).

(32) *Comment:* There is not enough information available to determine Gila chub critical habitat.

Our Response: While we acknowledge that there are gaps in our understanding of the biology of the species, we have sufficient information to identify those geographic areas occupied by the species that contain the features essential to the species and require special management considerations or protection.

(33) *Comment:* It is unclear if the proposed listing of Gila chub as endangered is regional in nature or confined to those areas of critical habitat.

Our Response: The listing of the Gila chub is rangewide; thus upon the effective date of this rulemaking Gila chub will be considered endangered wherever found (See table in the ''Regulation Promulgation'' section below). Areas designated as critical habitat in this final rule represent a subset of the entire range of the species (see Table 1 below).

(34) *Comment:* The proposed designation does not provide adequate information about the population in Spring Creek, and specifically the threats to this population. Thus listing in Spring Creek is not justified.

Our Response: When we consider a taxon for listing, unless we are considering a distinct population segment, we list the entire taxon, not individual populations. With respect to Spring Creek, this tributary was surveyed in 2005 on Forest Service lands in the middle of the area, and Gila chub were found to be abundant with multiple year classes represented, indicating good recruitment. The threats to the species are addressed below in the ''Summary of Factors Affecting the Species'' section.

(35) *Comment:* The Service has designated critical habitat on tribal land in areas where the Service admits it does not have current status information, and yet the Service has excluded other areas on private land due to a lack of information.

Our Response: We have excluded lands of the San Carlos Apache Tribe from the designation pursuant to section 4(b)(2) of the Act (see ''Exclusions Under Section 4(b)(2) of the Act'' section below). The San Carlos Apache Tribal lands were the only tribal lands involved in this final designation.

(36) *Comment:* The Service knew in 1983 that the Gila chub warranted listing, despite gaps in available information. The 19-year delay resulted in its status declining further, but represents a good example that existing regulatory protections are inadequate.

Our Response: We did first consider conservation of the Gila chub in 1982 when the species was listed as a category 1 candidate species (see ''Previous Federal Actions'' from the proposed rule, August 9, 2002, 67 FR 51948). We agree that we lacked much of the information we now have on the species, including a status review conducted by the AGFD (Weedman et al. 1996). We also agree that the status since that time has deteriorated, reflecting the severity of the threats to the species, including the lack of protection afforded by other forms of regulation (see ''Inadequacy of Existing Regulatory Mechanisms'' section below).

(37) *Comment:* The State of Arizona has initiated no actions to assess the status of or protect this species.

Our Response: We disagree. The AGFD assisted the BLM with the establishment of Gila chub in Lousy Canyon and Larry Creek in 1995. The AGFD initiated the establishment of Gila chub into Romero and Bear Canyons concurrent with the reestablishment of Gila chub that were salvaged from the Aspen Fire into Sabino Canyon. AGFD has initiated several other reestablishment efforts of Gila chub in the Santa Cruz and San Pedro river basins that will likely take place in 2005 or 2006.

The Gila chub is considered a Wildlife of Special Concern in Arizona (AGFD 2005b), although this provides no regulatory protection. Arizona Game and Fish Commission Order 41 prohibits collection of, or fishing for, Gila chub in Arizona, except where such collection is authorized by special permit (AGFD 2005c). The AGFD does regulate the use of live bait and has restricted use of live bait in most of the Gila River system in Arizona (AGFD 2005c), which helps to reduce the number of nonnative species released into the Gila chub's habitat.

(38) *Comment:* The Service has not provided a ''takings analysis.''

Our Response: We conducted a takings analysis at the time of the proposed rule and as part of this final rule. The takings implications assessment concludes that the designation of critical habitat for the Gila chub does not pose significant takings implications.

(39) *Comment:* The Service should have evaluated existing conservation efforts under its Policy for Evaluation of Conservation Efforts (PECE) when making Listing Decisions.

Our Response: Throughout this final rule, we have discussed ongoing conservation efforts of various agencies, and we have evaluated how these efforts have affected the status of and threats to the Gila chub with regard to listing. Our PECE policy refers to formalized efforts that are directed at conservation of a species. We are aware of no such efforts for the Gila chub; further, recent and ongoing actions to conserve the species have resulted in some success, but have been unable to improve the status of the Gila chub since the proposed rule.

(40) *Comment:* The Service should not designate critical habitat in Lousy Canyon and Larry Creek because these were relatively recent introductions of the species and extending the protection of critical habitat to these systems may not be supported because they may not have the PCEs necessary to support the long-term persistence of the Gila chub.

Our Response: Gila chub were introduced into Lousy Canyon and Larry Creek in 1995. Since that time, these streams have been surveyed for fishes on a frequent basis, and Gila chub have consistently been documented, and are thriving, despite drought and wildfire events that threatened other

nearby populations of Gila chub. We believe that because Gila chub have persisted, and thrived, for 10 years in these systems, both these streams contain the PCEs necessary to support Gila chub. However, these stream segments are very small, isolated, and threatened by livestock grazing and the potential for wildfire. Given this information, we have found that Lousy Canyon and Larry Creek meet our definition of critical habitat because they have the physical and biological features essential to the conservation of the species, and require special management consideration.

(41) *Comment:* The Service cannot exclude tribal lands from the designation based on the development of a fisheries management plan because exclusions based on plans that are not part of the administrative record is improper, and existing case law (*Center for Biological Diversity* v. *Norton*) clearly rejected the Service's policy of solely excluding lands from critical habitat designations based on the rationale that ''additional special management is not required if adequate management or protection is in place.''

Our Response: The San Carlos Apache Tribe submitted a Fishery Management Plan to us on September 27, 2005, during the public comment period on the proposed rule. We have determined that it is appropriate to exclude critical habitat from the San Carlos Apache tribal lands as defined under section 4(b)(2) of the Act.

General Comments Issue 3: National Environmental Policy Act (NEPA) Compliance and Economic Analysis

(42) *Comment:* The Service has not provided a NEPA analysis or economic analysis.

Our Response: We announced the availability of a draft NEPA analysis and draft economic analysis for the proposed designation of critical habitat for the Gila chub for public comment on August 31, 2005 (70 FR 51732). We have finalized these documents, and they are available to the public (see **ADDRESSES** section above), and online at *http://www.fws.gov/arizonaes/*.

(43) *Comment:* Designation of critical habitat will ruin property values.

Our Response: Critical habitat designations do not by themselves constitute a burden in terms of Federal laws and regulations on private landowners carrying out private activities. When Federal approval or permit is required, or Federal funds are involved with a project proposed on private property that is likely to adversely modify or destroy critical habitat, then the critical habitat designation imposes Federal regulatory compliance obligations that can affect private landowners. Absent Federal approval, permits, or funding, the designation does not affect activities on private lands. Based on our economic analysis, we have determined that economic impacts from the designation of Gila chub critical habitat will not have a substantial or significant effect on small business entities.

(44) *Comment:* The proposed rule has not evaluated the economic effect of critical habitat on the San Carlos Apache Tribe as required in section 4(b)(2). The Service should not designate critical habitat on tribal land to avoid economic impacts to the tribe.

Our Response: We have evaluated the economic impacts to the San Carlos Apache Tribe in our economic analysis, which we have made available to the public as a draft and final report. The final economic analysis is available online (*http://www.fws.gov/arizonaes/*). We have excluded the San Carlos Apache tribal lands from the designation (see the ''Exclusions Under Section 4(b)(2) of the Act'' section below).

(45) *Comment:* The draft economic analysis provides the costs to be used to judge the benefits of exclusion, but fails to analyze the benefits of inclusion. One commenter stated that economic benefits could include tourism to healthy riparian systems and water quality benefits to communities.

Our Response: In the context of a critical habitat designation, the primary purpose of the rulemaking (i.e., the direct benefit) is to designate areas in need of special management that contain the features that are essential to the conservation of listed species.

The designation of critical habitat may result in two distinct categories of benefits to society: (1) Use; and (2) non-use benefits. Use benefits are simply the social benefits that accrue from the physical use of a resource. Visiting critical habitat to see endangered species in their natural habitat would be a primary example. Non-use benefits, in contrast, represent welfare gains from ''just knowing' that a particular listed species'' natural habitat is being specially managed for the survival and recovery of that species. Both use and non-use benefits may occur unaccompanied by any market transactions.

A primary reason for conducting this analysis is to provide information regarding the economic impacts associated with a proposed critical habitat designation. Section 4(b)(2) of the Act requires the Secretary to designate critical habitat based on 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. Economic impacts can be both positive and negative and by definition, are observable through market transactions.

Where data are available, this analysis attempts to recognize and measure the net economic impact of the proposed designation. For example, if the fencing of a species' habitat to restrict motor vehicles results in an increase in the number of individuals visiting the site for wildlife viewing, then the analysis would recognize the potential for a positive economic impact and attempt to quantify the effect (e.g., impacts that would be associated with an increase in tourism spending by wildlife viewers). In this particular instance, however, the economic analysis did not identify any credible estimates or measures of positive economic impacts that could offset some of the negative economic impacts analyzed earlier in this analysis.

Under Executive Order 12866, OMB directs Federal agencies to provide an assessment of both the social costs and benefits of proposed regulatory actions. OMB's Circular A–4 distinguishes two types of economic benefits: direct benefits and ancillary benefits. Ancillary benefits are defined as favorable impacts of a rulemaking that are typically unrelated, or secondary, to the statutory purpose of the rulemaking. In the context of critical habitat, the primary purpose of the rulemaking (i.e., the direct benefit) is the potential to enhance conservation of the species. The published economics literature has documented that social welfare benefits can result from the conservation and recovery of endangered and threatened species. In its guidance for implementing Executive Order 12866, OMB acknowledges that it may not be feasible to monetize, or even quantify, the benefits of environmental regulations due to either an absence of defensible, relevant studies or a lack of resources on the implementing agency's part to conduct new research. Rather than rely on economic measures, the Service believes that the direct benefits of the proposed rule are best expressed in biological terms that can be weighed against the expected cost impacts of the rulemaking.

(46) *Comment:* The draft economic analysis fails to distinguish costs specific to critical habitat designation from the costs of listing and other co-extensive costs. The draft economic analysis includes a variety of costs due to factors other than critical habitat,

many of which will occur regardless of whether critical habitat is designated.

Our Response: In conducting economic analyses, we are guided by the 10th Circuit Court of Appeal's ruling in the New Mexico Cattle Growers Association case (248 F.3d at 1285), which directed us to consider all impacts, ''regardless of whether those impacts are attributable co-extensively to other causes.'' As explained in the analysis, due to possible overlapping regulatory schemes and other reasons, there are also some elements of the analysis that may overstate some costs.

(47) *Comment:* We received questions regarding the draft economic analysis use of 10 cubic feet per second (cfs) streamflow as the minimum requirement for Gila chub, stating it is likely an overestimate.

Our Response: Section 4.1 of the draft economic analysis states the Service believes a conservative approach is to assume that the Gila chub requires a minimum of 10 cfs of streamflow. However, the draft economic analysis does not utilize a 10 cfs streamflow value to quantify potential impacts to water supply, because flow data is incomplete in proposed areas, and specific water management changes that would be necessary to provide required flow are not known. Instead, the draft economic analysis considers streamflow requirements coupled with actual flow data for each area to identify areas where potential water management impacts associated with conservation activities for the Gila chub may occur. Section 4 of the draft economic analysis discusses the value of the water resources that are at risk within proposed critical habitat areas.

(48) *Comment:* The draft economic analysis makes a flawed assumption that all private entities will voluntarily undertake actions to mitigate for Gila chub. The draft economic analysis is predicated on an assumption that private parties will voluntarily undertake expensive actions to mitigate adverse impacts to Gila chub.

Our Response: The draft economic analysis quantifies the costs of conservation efforts that have or may be undertaken for the Gila chub to avoid adverse impacts on the species or its habitat. Some of these actions may result from permitting or other Federal requirements, while other efforts may be undertaken by private actors to avoid adverse impacts on the species or its habitat. Thus, knowledge that one's actions are taking place within critical habitat areas may lead to some changes in these activities to avoid adversely affecting the species and its habitat.

(49) *Comment:* The draft economic analysis uses different (and incorrect) measures than the proposed rule for determining the location of proposed critical habitat. The draft economic analysis creates a 300-foot buffer from the centerline of the stream while the proposed critical habitat extends 300 feet from the bankfull width of the stream.

Our Response: As discussed in section 2.1, the draft economic analysis approximates the acreage of proposed critical habitat by creating a buffer of 300 feet on either side of the proposed critical habitat centerline developed by the Service, because geographic data depicting the bankfull width of proposed stream segments were not available. This method was determined to be the best approximation of the lateral extent of the proposed critical habitat designation based on available data. We also believe that the difference would generally be less than 15 m (50 ft) and would not be significant to the overall analysis. To estimate land ownership, geographic data of current land ownership was overlaid with critical habitat polygons using GIS analysis using the 300-foot buffer.

(50) *Comment:* The final draft economic analysis is based on critical habitat as proposed in the August 9, 2002, proposed rule, rather than the August 31, 2005, revised proposed rule. As a result some economic impacts that are not within the revised critical habitat are improperly included as economic costs. The description in the draft economic analysis of the length of the Bonita Creek stream reach appears to be taken from the 2002 rule.

Our Response: The final draft economic analysis is based on the revised August 31, 2005, proposed rule notice (70 FR 51732), using geographic data provided to Industrial Economics on May 16, 2005. A typographical error appeared in section 4.2, which stated the length of the proposed length of Bonita Creek incorrectly. This error has been fixed in the final draft economic analysis.

(51) *Comment:* The analysis of section 7 consultation and other ''administrative'' costs must segregate costs by species instead of attributing all costs from multi-species actions to Gila chub.

Our Response: The draft economic analysis separates and includes administrative costs attributable to the Gila chub. If multiple species are considered in a consultation, the draft economic analysis assumes that the costs directly attributable to the Gila chub are equal to the costs of a single technical assistance or consultation. We agree that the cost of consultations that consider impacts to multiple species are likely to exceed the costs of consultations considering a single species, and this is taken into account in the analysis.

(52) *Comment:* New information was provided that 245 acres of deeded land is proposed to be developed into 102 residential lots at Spring Creek Ranch. Creating a 300-foot wide buffer on either side of the creek would eliminate 39 of the lots from future development, at a current lot value of $600,000. Thus, total impacts of critical habitat would be $23.4 million (the value of the land lost from development multiplied by the number of lots).

Our Response: Information on this development was requested in section 7 of the draft economic analysis. The new information provided has been incorporated into section 7 of the final economic analysis. The project, as currently planned, will leave a 40 to 60 foot buffer from the stream, and will position lots outside of the 100-year flood plain. If this formation is sufficient to prevent impacts on Gila chub, then no additional economic impacts are anticipated. If, however, conservation efforts for the Gila chub result in the prohibition of all development within 300 feet of the bankfull width of the stream, economic impacts of up to $23.4 million could occur. The final economic analysis includes this range of economic impacts in section 7 of the analysis. We have also excluded privately owned lands in Spring Creek due to potential economic impacts as identified in our economic analysis (see ''Exclusions Under Section 4(b)(2) of the Act'' section below).

(53) *Comment:* The revised boundaries of Cienega Creek include property owned by Vail Valley Joint Venture private property. Joint Venture's two-acre dam site and diversion works are located within the proposed critical habitat. The replacement cost of 1,121.85 acre-feet of water annually would be $8 million to $9 million.

Our Response: The Vail Valley Joint Venture site is used to exercise surface water rights on Cienega Creek held by the Del Lago Golf Club (Club) for turf and landscape irrigation. Part of the advantage of having this point of diversion for the Club is the low costs to operate and maintain the operations. If a change in water diversions or point of diversion were required, economic costs could be $8 million to $9 million, as estimated by the Club. These estimates provided in the public comment from Joint Venture and the Club are now incorporated into the

economic analysis. The likelihood that the Club would need to establish a new point of diversion or change its water diversions is unknown. We have also excluded privately owned lands in Cienega Creek due to the potential economic impacts as identified in our economic analysis (see ''Exclusions Under Section 4(b)(2) of the Act'' section below).

(54) *Comment:* The potential economic impacts of the critical habitat designation on the Morenci mine were not properly evaluated in the draft economic analysis. The Service did not properly evaluate the economic impacts to the mining industry or evaluate the socioeconomic impacts to the surrounding communities resulting from any negative impacts to mining.

Our Response: The draft economic analysis discussed potential impacts to mining activities that were physically located within proposed critical habitat areas. Based on information provided during the public comment period from mining interests, the economic analysis has been revised to include information on potential impacts to the mining industry that could occur related to water diversions or withdrawals in proposed critical habitat for mining activities occurring outside of proposed critical habitat.

(55) *Comment:* The analysis of impacts to water development in Bonita Creek is based on faulty information resulting in illogical and unsupported conclusions that mistakenly attribute a cost of up to $9.5 million to critical habitat designation. Gila chub critical habitat would not limit the use of the City of Safford's water rights.

Our Response: As stated in section 4.2 of the draft economic analysis, the Service could recommend, or the City of Safford could decide, that in order to prevent take of Gila chub the City must completely abandon its Bonita Creek infiltration gallery, resulting in a loss of available water to the City. Section 4.2 states that, while this scenario appears unlikely, information on this scenario is provided in order to understand the potential magnitude of impacts should it occur. The analysis concludes that, while the City could replace any lost volume from Bonita Creek sources from other active production wells and existing back-up wells, abandoning the Bonita Creek infiltration gallery could result in economic impacts to the City. The impact can be viewed in terms of a lost capital investment; the loss of an inexpensive, reliable, and local, high-quality water supply requiring very little treatment and transportation; and a constraint on the City's ability to flexibly and effectively manage regional water supply and demand. As a proxy for the value of this economic impact, this analysis calculates the cost to the City to replace water rights for a volume equal to the potential lost volume from Bonita Creek, both the currently unused volume and the volume of the entire water right. Total replacement costs are estimated to range from $2.5 million to $9.5 million in undiscounted dollars. We have excluded Bonita Creek from the designation (see ''Exclusions Under Section 4(b)(2) of the Act'' section below).

(56) *Comment:* We received questions on the inclusion of costs associated with Vail Water Company's Well #5. The analysis of water development in Cienega Creek assumes occurrence of future actions with no supporting data to indicate they are reasonably certain to occur.

Our Response: Section 4.2 of the draft economic analysis quantifies the potential impacts to the Vail Water Company's operations on Cienega Creek. Although this well is not currently in use, Vail Water Company could begin pumping water from the well for non-potable uses and could use the water for potable use with some treatment. Therefore, it is appropriate to include replacement costs in the draft economic analysis as the potential upper bound of cost related to Gila chub conservation activities.

(57) *Comment:* The assumption that economically harvestable timber exists in proposed critical habitat areas on upper Blue River is unsupportable by data.

Our Response: Section 6.2 of the draft economic analysis describes the potential impacts of limitations on timber harvest to the San Carlos Apache. The San Carlos Apache Tribe, who owns and manages the proposed critical habitat lands on the upper Blue River, identified that the area within the proposed critical habitat designation would be managed for timber harvest and production losses would be incurred as a result of increasing the current riparian timber buffer from 66 feet to 300 feet. The commenter does not provide evidence to dispute the statements made by the San Carlos Apache. The total value of timber losses estimated is $308,000 in undiscounted dollars, or $15,400 annually over 20 years.

(58) *Comment:* Restrictions on burning on the San Carlos Apache Reservation would be contrary to the best interests of Gila chub conservation and so are unlikely to result from critical habitat designation. This cost should not be included in the economic analysis.

Our Response: The proposed rule identifies prescribed fire as one of the activities that may affect the Gila chub and require consultation (on Federal lands). The draft economic analysis does not state that restrictions on prescribed burning will occur on the San Carlos Apache Reservation. It states that if the Tribe were not able to perform fire management activities as planned, the risk of catastrophic fire on Tribal lands could increase. Cost estimates are not included for this activity.

(59) *Comment:* One commenter asked if the draft economic analysis factored in the costs of eliminating non-native game fish and the cost in lost tourism of eliminating those non-native game fish.

Our Response: Section 8.3.3 of the draft economic analysis summarizes potential impacts to recreational activities. Based on information collected during the development of the economic analysis, the Gila chub does not occur in popular recreational fishing areas. In addition, non-native game fish stocking does not occur in any of the areas proposed for critical habitat designation. Significant economic impacts to recreational activities from Gila chub conservation activities within the proposed critical habitat designation are therefore not anticipated.

(60) *Comment:* The Service failed to evaluate a reasonable range of alternatives in its NEPA analysis.

Our Response: Our environmental assessment considered a range of proposed alternatives that we believe are consistent with intent of NEPA. Under NEPA, alternatives are developed based upon the purpose and need for the project. It is not the purpose or intent of an environmental assessment to evaluate all possible situations and conditions, instead a range of alternatives that meet the purpose and need for this project were evaluated in the environmental assessment. The environmental assessment describes in section 2.1 how the alternatives were defined to meet the purpose and need of the project, which is the designation of critical habitat for the Gila chub.

(61) *Comment:* An environmental assessment is not adequate for an action of this magnitude; instead an environmental impact statement (EIS) is required.

Our Response: Our environmental assessment considered a no-action alternative and an action alternative and discussed the adverse and beneficial environmental impacts of each. The impacts evaluated in the environmental assessment are for those associated with the designation of critical habitat above

those impacts due to listing alone. In that regard, we determined through the environmental assessment that the overall environmental effects of this action were not significant. An EIS is required only if we find that the proposed action is expected to have a significant impact on the human environment. Chapter 4 of the environmental assessment provides the basis for determining the significance of the proposed action and was conducted using Council on Environmental Quality regulations. Based on our analysis and comments received from the public, we prepared a final environmental assessment and made a Finding of No Significant Impact (FONSI), negating the need for preparation of an EIS. We believe our environmental assessment is consistent with the spirit and intent of NEPA. The final environmental assessment, FONSI, and final economic analysis provide our rationale for determining that critical habitat designation would not have a significant effect on the environment. Those documents are available for public review (see **ADDRESSES** section).

(62) *Comment:* Economic impacts to the mining industry and land development were not adequately evaluated.

Our Response: We have made modifications to the final economic analysis to address these concerns.

(63) *Comment:* The Service improperly concludes critical habitat will result in minor and non-controversial impacts.

Our Response: We believe the incremental impacts of designation of critical habitat above listing impacts are indeed minor. See also response to comment 61 above.

(64) *Comment:* The draft environmental assessment did not consider impacts on groundwater withdrawals by the mining industry.

Our Response: Impacts to groundwater withdrawals by the mining industry would not be significantly greater with critical habitat than the impacts due to listing alone.

(65) *Comment:* The draft environmental assessment fails to adequately consider impacts to tribal resources and economic impacts due to designation of critical habitat on the San Carlos Apache lands.

Our Response: With the exclusion of San Carlos Apache lands from critical habitat designation, no impacts are expected.

(66) *Comment:* Environmental justice concerns are not adequately considered in the NEPA analysis.

Our Response: We feel environmental justice issues were addressed to the greatest extent possible.

(67) *Comment:* The draft economic analysis underestimates the economic impacts of designation, as well as the impacts on land management activities.

Our Response: The majority of critical habitat is currently occupied by Gila chub. Therefore designation of critical habitat has only minor impacts beyond those of listing alone.

(68) *Comment:* The draft economic analysis ignores the ''recovery'' standard imposed by previous case law for determination of ''adverse modification'' to critical habitat.

Our Response: We disagree. This standard is discussed on page 40 of the environmental assessment (Section 3.2.2.2) and in other sections.

Comments From States

Section 4(i) of the Act states: ''the Secretary shall submit to the State agency a written justification for failure to adopt regulations consistent with the agency's comments or petition.'' Comments received from States regarding the proposal to designate critical habitat for the Gila chub are addressed below. We received comments from AGFD, NMGF, and the New Mexico Interstate Stream Commission. As noted above, these comments were drafted in part by individuals from whom we also requested peer review. All three sets of comments acknowledged the decline of the Gila chub, the threats to the species, the need for its protection, and were generally supportive of the proposed rule.

(69) *State Comment:* Mule Creek in New Mexico provides the PCEs and should be included in the critical habitat designation.

Our Response: Refer to our response to comment 1 above. We did not consider Mule Creek in our analysis of streams to propose for critical habitat because Gila chub had never been documented in this creek. We agree that Mule Creek appears to be suitable habitat for the species, and will work with New Mexico Game and Fish, and other interested stakeholders, to potentially introduce Gila chub to this stream, if feasible.

(70) *State Comment:* Much of the habitat occupied by the Gila chub is on private land. Designating critical habitat on these lands raises the possibility of placing unnecessary burdens upon and alienating those parties whose cooperation is vital for the successful implementation of appropriate conservation measures. The Service should carefully consider the benefits of fostering critical working relationships between Federal and private entities against a potential benefit that might occur by designating critical habitat for the Gila chub.

Our Response: In general, private landowners are not affected by critical habitat. Critical habitat directly affects only Federal actions. Pursuant to section 7 of the Act, Federal agencies ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. Individuals, organizations, States, local and Tribal governments, and other non-Federal entities are only affected by the designation of critical habitat if their actions occur on Federal land, require a Federal permit, license, or other authorization, or involve Federal funding (see ''Effect of Critical Habitat Designation''). We agree that cooperative conservation partnerships with private land owners are an important element in the conservation of the Gila chub and we agree that designation of critical habitat can lead to lack of cooperation by affected landowners. We have pursued such partnerships on numerous projects involving the Gila chub and will continue these partnerships after the chub is listed, and we have carefully considered the effects of listing and critical habitat designation on these partnerships.

(71) *State Comment:* How will listing the Gila chub affect AGFD enforcement of sport fishing regulations for the roundtail chub? Is the Service considering listing other species of chub under 4(e)(A) of the Act regarding similarity of appearance cases?

Our Response: Refer to our response to comment 7 above.

Summary of Changes from Proposed Rule

Based upon our review of the public comments, the economic analysis, environmental assessment, issues addressed at the public hearing, and any new relevant information that may have become available since the publication of the proposal, we reevaluated our proposed listing and critical habitat designation and made changes as appropriate. Other than minor clarifications and incorporation of additional information on the species' biology, status, and threats, this final rule differs from the proposal by the following: (1)We excluded lands of the San Carlos Tribal Apache Tribe pursuant to section 4(b)(2) of the Act (see ''Exclusions Under Section 4(b)(2) of the Act'' section below).

(2) We excluded Bonita Creek downstream of San Carlos Apache

Tribal lands, pursuant to section 4(b)(2) of the Act, based upon a partnership with the City of Safford, BLM, and Reclamation to manage lands on Bonita Creek (see ''Exclusions Under Section 4(b)(2) of the Act'' section below).

(3) We have excluded proposed critical habitat on 1.9 mi of the lower segment of Cienega Creek and on 1.9 mi of Spring Creek, pursuant to section 4(b)(2) of the Act, due to the potential economic impact of designating these segments.

(4) We modified the primary constituent elements for the Gila chub by adding '' * * * a high degree of streambank stability and healthy, intact riparian vegetative community * * *'' and by broadening the range of water temperatures required for spawning to more accurately reflect data in our files, and providing examples of suitable ranges of water quality parameters (see ''Primary Constituent Elements'' section below).

(5) We are not including Post Canyon in the final designation of critical habitat based on recent information indicating that it went dry in 2005 and thus does not maintain sufficient PCEs necessary to support a population of Gila chub (AGFD 2005a). We therefore no longer believe that it meets the definition of critical habitat.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Gila chub (*Gila intermedia*) are described below.

Status of Species

As discussed in further detail above in the ''Background'' section, we estimate, based on collection records, historical habitat data, the 1996 Arizona Game and Fish Department Gila chub status review (Weedman et al. 1996), and information in our files documenting currently occupied habitat (see Table 1 above), that the Gila chub have been eliminated from 85 to 90 percent of formerly occupied habitat. This loss has occurred as a result of the introduction and spread of nonnative aquatic species that prey on and compete with the Gila chub, and habitat loss and degradation from a variety of actions, described in detail below, most notably water use that has led to drying of stream channels throughout the range of the Gila chub. Additionally, we estimate that 90 percent of the Gila chub's currently occupied habitat has been degraded, either by the presence of nonnative species or land use that degrades habitat, such as livestock grazing. We believe that, without the protection of the Act, the Gila chub is likely to go extinct throughout all or a significant portion of its range.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Within the historical range of the Gila chub, much wetland habitat has been destroyed or degraded, and loss of this habitat continues today (Minckley and Deacon 1991; Tellman et al. 1998; Propst 1999). Activities such as groundwater pumping, surface water diversions, impoundments, dams, channelization (straightening of the natural watercourse, typically for flood control purposes), improperly managed livestock grazing, wildfire, agriculture, mining, road building, residential development, and recreation all contribute to riparian and cienega habitat loss and degradation in Arizona and New Mexico (Minckley and Deacon 1991; Weedman et al. 1996; Tellman et al. 1998; Propst 1999). All of these activities are human-caused; thus the local and regional effects of these activities are expected to increase with an increasing human population because a larger human population will result in more of these kinds of activities. As of 2005, Arizona was listed as the second fastest in Statewide population growth in the nation, and from 2000–2003, two Arizona counties (Pinal and Yavapai, counties that contain about 40 percent of Gila chub populations) grew by over 10 percent; further, the population of the State of Arizona is projected to grow by 109 percent by the year 2030 (U.S. Census Bureau 2005).

Water withdrawals. Growing water demands threaten the existence of southern Arizona perennial surface water in the Gila Basin, as well as the species that depend on it. Groundwater pumping has been a major factor in loss of surface water in springs, streams, and cienegas of Arizona, most notably in the Santa Cruz River Basin (Tellman et al. 1997). Since 1940, groundwater levels in Central Arizona have dropped over 220 feet, with Central Tucson subsiding in elevation at least one foot since 1950, due to this groundwater withdraw (Arizona Water Resources Research Center 2005). An example of the magnitude of these changes is the Santa Cruz River. Historically, the Santa Cruz River was occupied by the Gila chub throughout the drainage (Weedman et al. 1996). Today, the Santa Cruz River and its major tributaries in the Tucson area flow only in response to flood events (Webb and Betancourt 1992), and the Gila chub is extirpated (i.e. eliminated) in the mainstem Santa Cruz, occurring only in several small populations in tributaries of the Santa Cruz (see Table 1 above). We estimate the Gila chub has been eliminated from 95 percent of its former range in the Santa Cruz drainage (Weedman et al. 1996).

In addition to historical losses, groundwater pumping poses a threat to surface flows in the remaining Gila chub habitats in Eagle Creek and Cienega Creek. Groundwater withdrawal in Eagle Creek, primarily for water supply for a large open-pit copper mine at Morenci, dries portions of the stream. Groundwater pumping in the upper Cienega Creek drainage supports burgeoning ranchette development near the town of Sonoita. The city of Prescott and towns of Prescott Valley and Chino Valley are growing at an average rate of over 4 percent per year (U.S. Census Bureau 2005), and this growth is mostly based on groundwater pumping in the Verde River basin. The cities of Prescott and Prescott Valley recently purchased the JWK Ranch in the headwaters of the Verde River, with the intent of drilling new wells to supply up to 8,700 acre-feet (AF) of groundwater per year, which may have serious adverse effects on the mainstem and tributaries of the Verde River.

Increasing population growth in Sierra Vista will likely stimulate borderland development, with a concurrent water demand increase that could accelerate riparian area destruction and modification, and increase threats to plants and animals dependent on surface water, including the Gila chub. The San Pedro River in southern Arizona historically supported at least 13 native fish species, including Gila chub, but now supports only 2 (The Nature Conservancy 2000). One of the known factors that have contributed to the loss of Gila chub in the San Pedro River basin is the pumping of groundwater for agriculture and municipal uses. Groundwater pumping is expected to increase with human population growth. In anticipation of the growing population, Fort Huachuca Military Reservation has filed a claim for use of 435 AF per year of tributary surface water from the Gila River adjudication, in addition to its estimated 1,655 AF per year currently used (Arizona Department of Water

Resources 1991). Groundwater pumping is widely recognized as a threat to the San Pedro and Verde Rivers, and the wildlife that depend on these rivers (McKinnon 2005a).

Two tributary streams in the Verde River Basin are under increasing demands for water from surface and ground water withdrawal. Williamson Valley Wash has experienced a number of recent housing developments, and more are proposed. Although data are lacking, the effects of water withdrawal in this area combined with recent drought appear to have eliminated most of Gila chub habitat in this system (G. Price, Long Meadow Ranch Property Owners Association, in litt. 2002; L. Graser, Arizona Department of Water Resources, pers. comm. 2005). Spring Creek, a small system with only about 3 miles of habitat for the Gila chub, is the site of a proposed housing development that will be approximately 200 acres in size. The development will require three new groundwater wells for its water supply; hydrologic studies have not yet been completed (J. Himes, Himes Consulting, pers. comm. 2005), but the effects to surface water in Spring Creek could be significant.

Stream channelization and irrigation. Sections of many Gila Basin rivers and streams have been and continue to be channelized for flood control, which disrupts natural channel dynamics and promotes the loss of riparian plant communities. Channelization changes the gradient of the stream above and below the channel. It increases streamflow in the channelized section, which results in increased rates of erosion of the stream and its tributaries, accompanied by gradual deposits of sediment in downstream reaches that may increase the risk of flooding (Emerson 1971; Simpson 1982). Channelization can affect Gila chub habitat by reducing its complexity, eliminating cover, reducing nutrient input, improving habitat for nonnative species, changing sediment transport, altering substrate size, and reducing the length of the stream (and therefore the amount of aquatic habitat available) (Gorman and Karr 1978; Simpson 1982; Schmetterling et al. 2001). Channelization will continue to contribute to riparian and aquatic habitat decline.

Irrigation directly from stream and cienega waters reduces or eliminates water in existing fish habitat. Fish can be carried into irrigation ditches, where they die following desiccation (drying) of the irrigation ditch. Irrigation dams prevent movement of fish between populations, resulting in genetic isolation within species; small populations are subject to genetic threats, such as inbreeding depression (reduced health due to elevated levels of inbreeding) and genetic drift (a reduction in gene flow within the species that can increase the probability of unhealthy traits; Meffe and Carrol 1994).

There are numerous surface water diversions in Gila chub habitats, including Spring Creek, Walker Creek, Mineral Creek, Dix Creek, and Eagle Creek. Larger dams may also prevent movement of fish between populations and dramatically alter the flow regime of streams through the impoundment of water (Ligon et al. 1995). The Arizona Water Settlements Act created legislation for the construction of a large water project in New Mexico, potentially a large dam. However, it is unclear at this time if this would effect the population of Gila chub in Turkey Creek.

Livestock grazing. Livestock grazing can have adverse impacts on Gila chub habitat. Poor livestock-grazing management is widely believed to have been one of the most significant factors contributing to regional stream channel downcutting (the entrenchment of stream channels and creation of arroyos) in the late 1800s. Livestock grazing can destabilize stream channels and disturb riparian ecosystem functions (Herefore 1992; Tellman et al. 1997). Livestock can negatively affect Gila chub habitat through removal of riparian vegetation (Clary and Webster 1989; Clary and Medin 1990; Schulz and Leininger 1990; Armour et al. 1991; Fleishner 1994), which can result in reduced bank stability, fewer pools, and higher water temperatures (Meehan 1979; Kauffman and Krueger 1984; Swanson et al. 1982; Minckley and Rinne 1985; Fleishner 1994; Belsky et al. 1999). Livestock grazing can also cause increased sediment in the stream channel, due to streambank trampling and riparian vegetation loss (Weltz and Wood 1986; Waters 1995; Pearce et al. 1998). Livestock physically alter streambanks through trampling and shearing, leading to bank erosion (Platts and Nelson 1989; Trimble and Mendel 1995). In combination, loss of riparian vegetation and bank erosion can alter channel morphology, including increased erosion and deposition, downcutting, and an increased width/depth ratio, all of which lead to a loss of pool habitats required by the Gila chub, and to loss of shallow side and backwater habitats used by larval chub (Trimble and Mendel 1995; Belsky et al. 1999).

Livestock grazing administered by either the FS or BLM occurs in most of the streams and watersheds containing Gila chub. We have completed four formal conferences on the effects of livestock grazing on Gila chub. All four conferences found that livestock grazing resulted in adverse effects to Gila chub and its habitat (U.S. Fish and Wildlife Service 2005b), but is not likely to jeopardize the species or result in destruction or adverse modification of critical habitat.

Mining activities. Mining activities were more widespread historically and may have constituted a greater threat in the past; however, the continued mining of sand and gravel, iron, gold, copper, or other materials remains a potential threat to the habitat of Gila chub. The recently proposed Gentry Iron Mine may be located within 1.6 km (1.0 mi) of two Gila chub populations on the Tonto National Forest. The effects of proposed mining activities, like the Gentry Iron Mine, on these populations are uncertain at this time, but may include adverse affects to water quality and lowered flow rates due to dewatering of nearby streams needed for mining operations. Sand and gravel mining removes riparian vegetation and destabilizes streambanks, which results in habitat loss for the Gila chub (Brown et al. 1998). Sand and gravel mining along the Santa Cruz, San Pedro, and Babocomari Rivers has had serious impacts in the past and continues to impact these rivers although at a reduced scale.

As noted above, groundwater pumping to support mining operations poses a threat to surface flows in the remaining Gila chub habitats in Eagle Creek from a large open-pit copper mine at Morenci which dries portions of the stream.

Roads. Roads have adversely affected Gila chub habitat by increasing surface runoff and sedimentation, which can increase turbidity, reduce primary production, and reduce numbers of aquatic insects (Burns 1971; Eaglin and Hubert 1993). Roads require in-stream structures, such as culverts and bridges that remove aquatic habitat and can act as barriers to fish movement (Barrett et al. 1992; Warren and Pardew 1998). All of these activities negatively impact Gila chub by lowering water quality and by reducing the quality and quantity of pools, by filling them with sediments, reducing the quantity of large woody-debris necessary to form pools, and by imposing barriers to movement. The end result is deterioration of habitat for the Gila chub (Burns 1971; Eaglin and Hubert 1993).

Vehicular use of roads in creek bottoms can degrade Gila chub habitat and result in Gila chub mortality. Such use inhibits riparian plant growth,

breaks down banks, causes erosion, causes sedimentation, and increases turbidity in the stream, particularly where vehicles drive through the stream (especially immediately downstream of the vehicular activity). These effects are likely to result in wider and shallower stream channels (Armour 1977; Meehan 1991). This causes progressive adjustments in other variables of hydraulic geometry and results in changes to the configuration of pools, runs, riffles, and backwaters; levels of fine sediments and substrate embeddedness; availability of instream cover; and other fish habitat factors in the vicinity of vehicle crossings (Sullivan et al. 1987; Rosgen 1994). It also changes the way in which flood flows interact with the stream channel and may exacerbate flood damage to banks, channel bottoms, and riparian vegetation. The breaking down of stream banks by vehicles would reduce undercut banks and overhanging vegetation that chub use as cover.

Adverse effects of stream sedimentation to fish and fish habitat have been extensively documented (Murphy et al. 1981; Newcombe and MacDonald 1991; Barrett 1992). Excessive sedimentation may cause channel changes that are adverse to the Gila chub. Excessive sediment may fill backwaters and deep pools used by Gila chub, and sediment deposition in the main channel may cause a tendency toward stream braiding (e.g. the stream becomes wider, shallower, and has numerous channels as opposed to one channel), thus reducing adult chub habitat, as well. Excessive sediment may smother aquatic insects (Newcombe and MacDonald 1991), thereby reducing chub food production and availability, and related turbidity may reduce the chub's ability to see and capture food (Barrett et al. 1992). Fish fry and eggs could also be killed or injured if vehicles are driven through stream segments where these life stages occur. Larger fish are likely to swim away to avoid death or injury. Public vehicular use is also often associated with an elevated risk of human-caused fire.

New roads are proposed in association with housing developments in Williamson Valley Wash and Spring Creek; surveys within the last 5 years indicate that both of these streams provide high quality Gila chub habitat and are occupied by the species. In the past, roads in Bonita Creek traversed the streambed numerous times over its entire length. Use of the Bonita Creek road system created local disturbance of normal stream function including displacement and injury of fish, increased turbidity, and seasonal destruction of fish eggs and larvae at road crossings. Erosion of stream banks and terraces resulted in some areas, negatively affecting the condition of aquatic and associated riparian communities that support Gila chub (BLM 1998; U.S. Fish and Wildlife Service 2004a). BLM reduced the number of roads through the lower reaches of Bonita Creek from 15 miles (the entire reach of Bonita Creek in the Gila Box Riparian National Conservation Area (RNCA) to about 2 miles. There are still localized impacts, as described above, including some continued mortality of Gila chub, where roads follow or cross Bonita Creek. BLM's new roads and facilities in Bonita Creek, including camping and day use areas, limit and direct these recreational activities. Some trampling of vegetation and banks likely occurs, but is localized and minimal in areas of concentrated public use along Bonita Creek.

Much of the current range of the Gila chub occurs on public lands administered by the BLM and FS. Public use of these lands is high, and such use creates an elevated risk of human-caused fire. This risk exists in picnic and camping areas where fire can escape into wild lands. Directing public use to relatively fire-safe areas, as opposed to allowing people to camp and picnic anywhere, can reduce this risk. For example, BLM's improvements to recreational facilities in Bonita Creek over the last decade have served to reduce the risk of wildfire associated with public use.

Development activities. Gila chub habitat is also increasingly threatened from urban and suburban development (Tellman et al. 1997). Urban and suburban development can affect Gila chub and their habitats in a number of ways, such as direct alteration of streambanks and floodplains from construction of buildings, gardens, pastures, and roads (Tellman et al. 1997), or as mentioned above, diversion of water, both from streams and connected groundwater (Glennon 1995). On a broader scale, urban and suburban development alters the watershed, which changes the hydrology, sediment regimes, and pollution input (Dunne and Leopold 1978; Horak 1989; Medina 1990; Reid 1993; Waters 1995). The introduction of nonnative plants and animals that can adversely affect Gila chub may also become more likely as nearby human populations increase due to activities, such as releases from home aquariums (Aquatic Nuisance Species Task Force 1994).

Suburban and urban development can degrade and eliminate Gila chub habitat. The Phoenix metropolitan area, founded in part due to its proximity to the Salt and Gila Rivers, is a population center of millions of people. As mentioned above, a new proposed development project would occupy a significant portion of the Spring Creek watershed. More generally, communities in the middle and upper Verde River watershed, such as the Prescott-Chino Valley, the Cottonwood-Clarkdale-Camp Verde communities, Strawberry, Pine, and Payson, are all seeing rapid population growth. The upper San Pedro River is also the location of rapid population growth in the Sierra Vista-Huachuca City-Tombstone area. Many of these communities are near Gila chub populations.

Human activities in the watershed have had substantial adverse impacts to Gila chub habitat. Watershed alteration is a cumulative result of many human uses, including timber harvest, livestock grazing, roads, recreation, channelization, and residential development. The combined effect of all of these actions results in a substantial loss and degradation of habitat (Burns 1971; Reid 1993). In Williamson Valley Wash, human uses (e.g., recreational use of off-road vehicles) in the highly erodible upper watershed have resulted in increased erosion and high loads of sediment. In 1993, flooding in Williamson Valley Wash carried enough sediment that the isolated pool where Gila chub were previously collected became completely filled with sand and gravel (Weedman et al. 1996).

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

We have determined that overutilization for commercial, recreational, scientific or educational purposes are not a threat to the Gila chub. Collection of, or fishing for, Gila chub in Arizona is prohibited by Arizona Game and Fish Commission Order 41, except where such collection is authorized by special permit (AGFD 2005c). The collection of Gila chub is prohibited in the State of New Mexico except by special scientific permit (NMGF 2005). Collection of Gila chub is prohibited in Mexico except by special permit. A few individual fish may be caught incidentally by recreational anglers; however, most Gila chub populations do not occur in popular fishing areas. Although roundtail chub is a related species that looks quite similar and is considered a sport fish in Arizona, AGFD allows a possession bag limit of 1 fish 13 inches or larger (AGFD 2005c); because Gila chub do not grow larger than approximately 8 inches, and because Gila chub are in geographical

areas in which roundtail chub generally do not occur, we believe that angling for roundtail chub is not a threat to the Gila chub. No commercial uses exist for Gila chub. A limited amount of scientific collecting occurs, but does not pose a threat to Gila chub since it is regulated by the States.

C. Disease and Predation

The introduction and spread of nonnative species has been identified as one of the major factors in the continuing decline of native fishes throughout North America and particularly in the southwestern United States (Miller 1961; Lachner et al. 1970; Ono et al. 1983; Moyle 1986; Moyle et al. 1986; Carlson and Muth 1989; Cohen and Carlton 1995; Fuller et al. 1990). Miller (1989) concluded that nonnative species were a causal factor in 68 percent of the fish extinctions in North America in the last 100 years. For 70 percent of those fish still extant, but considered to be endangered or threatened, introduced nonnative species are a primary cause of the decline (Aquatic Nuisance Species Task Force 1994; Lassuy 1995). In Arizona, release or dispersal of recently introduced nonnative aquatic organisms is a continuing phenomenon (Rosen et al. 1995; U.S. Fish and Wildlife Service 2001a). Aquatic nonnative species are introduced and spread into new areas through a variety of mechanisms, intentional and accidental, authorized and unauthorized. Mechanisms for nonnative dispersal in the southwestern United States include interbasin water transfer, sport fish stocking, aquaculture, aquarium releases, bait-bucket release (release of fish used as bait by anglers), and biological control (e.g., the introduction of one species to control another species) (Aquatic Nuisance Species Task Force 1994; U.S. Fish and Wildlife Service 2001a).

Gila chub evolved in a fish community with low species diversity and where few predators existed, and as a result developed few or no mechanisms to deal with predation from nonnative species (Carlson and Muth 1989). In its habitats, the Gila chub was a predatory fish and experienced little or no predation or competition from other species. The introduction of more aggressive and competitive nonnative fish led to significant losses of Gila chub.

In the Gila River basin, introduction of nonnatives is considered a major factor in the decline of all native fish species (Minckley 1985; Williams et al. 1985; Minckley and Deacon 1991). Aquatic and semi-aquatic mammals, reptiles, amphibians, crustaceans, mollusks (snails and clams), insects, zoo- and phytoplankton, parasites, disease organisms, algae, and aquatic and riparian vascular plants that are outside of their historical range have all been documented to adversely affect aquatic ecosystems (Cohen and Carlton 1995). As described below, the nonnative fishes have been demonstrated to pose a significant threat to Gila River basin native fishes, including Gila chub (Minckley 1985; Williams et al. 1985; Minckley and Deacon 1991).

The aquatic ecosystem of the central Gila River basin has relatively small streams with warm water and low gradients, and many of the native aquatic species are small in size. Therefore, much of the threat to native fishes comes from small nonnative fish species, as has also been noted for southern Nevada aquatic ecosystems (Deacon et al. 1964). Examples of this are the impacts of mosquitofish (*Gambusia affinis*) and red shiner (*Cyprinella lutrensis*), which may compete with or prey upon native fish in the Gila River basin (Meffe 1985; Douglas et al. 1994).

Nonnative fishes known to occur within the historical range of Gila chub basin include channel catfish (*Ictalurus punctatus*), flathead catfish (*Pylodictis olivaris*), red shiner, fathead minnow (*Pimephales promelas*), green sunfish (*Lepomis cyanellus*), largemouth bass (*Micropterus salmoides*), smallmouth bass (*Micropterus dolomieui*), rainbow trout (*Oncorynchus mykiss*), western mosquitofish, carp (*Cyprinus carpo*) (Young and Bettaso 1994; Weedman et al. 1996), warmouth (*Lepomis gulosus*), bluegill (*Lepomis macrochiris*), yellow bullhead (*Ameiurus natalis*), black bullhead (*Ameiurus melas*), and goldfish (*Carassius auratus*) (AGFD Native Fish Database 2005). Additionally, as discussed below, nonnative parasites introduced incidentally with nonnative species may jeopardize Gila chub populations. Although parasites are normal in fish populations and typically do not cause mortality in their host, the effects of nonnative parasites can be significant, especially when combined with other stressors such as poor habitat conditions (U.S. Geological Survey 2004, 2005). Nonnative crayfish (virile crayfish) also prey on and compete with Gila chub (Carpenter 2000, 2005).

Dudley (1995) correlated green sunfish presence with Gila chub declines in Sabino Creek, Arizona, and documented predation by small green sunfish on young-of-the-year Gila chub. Dudley and Matter (2000) documented green sunfish predation on Gila chub and the displacement of Gila chub by green sunfish from preferred habitats; even small Green sunfish were highly predaceous on Gila chub. Unmack et al. (2003) found that in Silver Creek, Gila chub did not show signs of recruitment below a waterfall where they occurred with green sunfish; upstream, in the absence of green sunfish, Gila chub populations had multiple year classes and good recruitment.

Western mosquitofish were introduced outside of their native ranges to help control mosquitoes. Because of their aggressive and predatory behavior, mosquitofish may negatively affect populations of small fish through predation and competition (Courtenay and Meffe 1989; Aarn and Unmack 1998). Introduced mosquitofish have been particularly destructive in the American west where they have contributed to the elimination or decline of populations of federally-threatened and endangered species, such as the Gila topminnow (*Poeciliopsis occidentalis occidentalis*) (Courtenay and Meffe 1989). They often attack, shred fins, and sometimes kill other fish species. Mosquitofish are known to prey on eggs, larvae, and juveniles of various fishes, including the Gila chub.

Largemouth bass are intentionally introduced for the purpose of sport fishing. Introduced bass usually affect populations of small native fishes through predation, sometimes resulting in the decline or extinction of such species (Minckley 1973). Species that have suffered such effects include populations of Gila chub and Monkey spring pupfish (*Cyprinodon* sp.) (Minckley 1973).

The Asian tapeworm (*Bothriocephalus acheilognathi*) was introduced into the United States via imported grass carp in the early 1970s. It has since become well established in the southeast and mid-southern United States and has been recently found in the southwest including the Gila Basin. The definitive host in the life cycle of the Asian tapeworm is cyprinid (fish in the minnow family) fishes. There is a potential threat to the Gila chub as well as to the other native fishes in Arizona because of the presence of this parasite in the Gila Basin and the presence of cyprinid fish. The Asian tapeworm affects fish health in several ways. The direct impacts to fish are through impeding digestion of food as it passes through the intestinal track, and loss of nutrients as the worm feeds off the fish; large enough numbers of worms cause emaciation and starvation. An indirect effect is that weakened fish are more susceptible to infection by other

pathogens. This parasite can infest many species of fish and is carried into new areas along with nonnative fishes or native fishes from contaminated areas. Asian tapeworm may be a significant source of mortality of humpback chub in the Colorado River basin (U.S. Geological Survey 2004, 2005).

The nonnative parasite *Ichthyophthirius multifiliis* (''Ich'') is a potential threat to Gila chub. ''Ich'' disease has occurred in some Arizona streams, probably favored by high temperatures and crowding as a result of drought (Mpoame 1982). The deep, quiet waters in which Gila chub often occur (Minckley 1973) seem stable enough that ''Ich'' cysts do not wash away. This protozoan becomes embedded under the skin and within the gill tissues of infected fish. When the ''Ich'' matures, it leaves the fish, causing fluid loss, physiological stress, and sites that are susceptible to infection by other pathogens. If ''Ich'' is present in large enough numbers they can also impact respiration because of damaged gill tissue. This parasite has been observed on the Sonoran sucker (*Catostomus clakii*), a species common throughout the Gila River basin, and ''Ich'' does not appear to be host-specific, so it could be transmitted to other species. ''Ich'' outbreaks were observed and caused significant mortality in Gila chub salvaged from Silver Creek; presumably, the parasite was already present in the population prior to salvage (E. Gardner, AGFD, pers. comm. 2005).

Anchor worm (*Lernaea cyprinacea*) (Copepoda), also a nonnative species, is an external parasite, and is unusual in that it has little host specificity, infecting a wide range of fishes and amphibians. Additionally, infection has been known to kill large numbers of fish due to tissue damage and secondary infection of the attachment site (Hoffnagle and Cole 1997). Presence of this parasite in the Gila River basin is a threat to the Gila chub and other native fish. In July 1992, the BLM found Gila chub that were heavily parasitized by *Lernaea cyprinacea* in Bonita Creek. These fish were likely more susceptible to parasites due to physiological stress as a result of degraded habitat and decreased water flows due to water withdrawals. Clarkson and Creef (1993) suspected infestations by *Lernaea cyprinacea* in causing high mortality of stocked native fish, razorback sucker (*Xyrauchen texanus*) and Colorado pikeminnow (*Ptycocheilus lucius*).

D. The Inadequacy of Existing Regulatory Mechanisms

Existing regulatory mechanisms have not been adequate to prevent the continuing decline of Gila chub. Gila chub are primarily threatened by introductions of nonnative fishes. Fish introductions are illegal unless approved by the appropriate States. However, enforcement is difficult. Many nonnative fish populations are established through illegal introductions (Aquatic Nuisance Specie Task Force 1994). The use of live bait is permitted in Arizona for nine species of fish, crayfish, and tiger salamanders (*Ambystoma pigrimum*), all of which are nonnative to the State of Arizona and several of which are known to have serious adverse effects on native species, including the Gila chub. The portion of the State in which use of live bait is permitted is limited, and use of live bait is restricted in much of the Gila River system in Arizona (AGFD 2005c). The use of live bait is allowed in the Gila Basin in New Mexico (NMGF 2004).

The increasing restriction of live bait use will reduce the input of nonnative species into the Gila chub's habitat. However, it will do little to reduce unauthorized bait use or other forms of ''bait-bucket'' transfer (e.g., dumping of unwanted aquarium fish which may be invasive) not directly related to bait use. In fact, those other ''bait-bucket'' transfers are expected to increase as the human population of Arizona increases and as nonnative species become more available to the public through increased aquaculture, increased aquarium trade, and increased distribution through mechanisms such as the Central Arizona Project (CAP) aqueduct (Aquatic Nuisance Species Task Force 1994; U.S. Fish and Wildlife Service 2001a). The general public has been known to dump unwanted pet fish and other aquatic species into irrigation ditches such as the CAP aqueduct in the Phoenix metropolitan area (U.S. Fish and Wildlife Service 2001a).

A variety of existing international conventions and laws, and Federal and State regulations, provide limited protection to the Gila chub and its habitat. The Gila chub is included in Wildlife of Special Concern in Arizona, and State regulations prohibit collection of or fishing for Gila chub in Arizona except under special permit (AGFD 2005c). In New Mexico, Gila chub is listed as endangered, and collecting is prohibited except by special permit (NMGF 2004). In Mexico, the Gila chub is endangered and the collection of threatened and endangered species is prohibited (NORMA Oficial Mexicana 1994 (NOM–059–ECOL–1994)). The habitat of the Gila chub and other threatened and endangered species is protected from some activities in Mexico.

The Lacey Act, as amended (16 U.S.C. 3371 et seq.), provides some protection for the Gila chub. This legislation prohibits the import, export, sale, receipt, acquisition, purchase, and engagement in interstate or foreign commerce of any species taken, possessed, or sold in violation of any law, treaty, or regulation of the United States, any Tribal law, or any law or regulation of any State.

The Federal Land Policy Management Act of 1976 (43 U.S.C. 1701 et seq.) and the National Forest Management Act of 1976 (16 U.S.C. 1600 et seq.) direct Federal agencies to prepare programmatic-level management plans to guide long-term resource management decisions. In addition, the FS is required to manage habitat to maintain viable populations of existing native and desired nonnative vertebrate species in planning areas (36 CFR 219.19). These regulations have resulted in the preparation of a variety of land management plans by the FS and the BLM that address management and resource protection of areas that support, or in the past supported, populations of Gila chub. The FS has only limited ability to regulate introductions or stockings of nonnative species that prey on the Gila chub.

Many activities that affect the Gila chub and its habitat may occur outside of the States where the species occurs. For instance, activities such as atmospheric pollution from copper smelters or other actions that may be responsible for global amphibian declines may also affect Gila chub. State and Federal air quality regulations strictly regulate emissions from copper smelters, historically a major source of acidic rainfall and atmospheric cadmium and arsenic in southeastern Arizona, pollutants that may affect the Gila chub (Hale and Jarchow 1988). However, a major source of these pollutants has been copper smelters in Sonora, Mexico, which are not subject to the same regulations as in the United States (Hale et al. 1995; Blanchard and Stromberg 1987).

Wetland values and water quality of aquatic sites inhabited by the Gila chub are afforded varying protection under the Federal Water Pollution Control Act of 1948, as amended (33 U.S.C. 1251–1376) (known as the Clean Water Act), and Federal Executive Orders 11988 (Floodplain Management), and 11990 (Protection of Wetlands). Section 404 of

the Clean Water Act regulates dredging and filling activities in waterways.

The New Mexico Department of Game and Fish has adopted a wetland protection policy whereby the Department does not endorse any project that would result in a net decrease in either wetland acreage or wetland habitat values. This policy affords only limited protection to Gila chub habitat because it is advisory only; destruction or alteration of wetlands is not regulated by State law.

The State of Arizona Executive Order Number 89–16 (Streams and Riparian Resources), signed on June 10, 1989, directs State agencies to evaluate their actions and implement changes, as appropriate, to allow for restoration of riparian resources. Implementation of this regulation may reduce adverse effects of some State actions on the habitat of the Gila chub, although benefits to the species have not been documented.

Both Arizona and New Mexico regulate surface and groundwater withdrawal through the Arizona Department of Water Resources in Arizona and the Interstate Stream Commission and Office of the State Engineer for surface and groundwater in New Mexico. While these authorities provide some regulation that may provide protection to Gila chub habitat, in general, the Gila River basin, while fully appropriated, is subject to ongoing adjudication. In Arizona, significant regulation occurs only in Active Management Areas (AMAs); outside of these areas, there are no limits on groundwater pumping in Arizona (McKinnon 2005b; L. Graser, Arizona Department of Water Resources, pers. comm. 2005). All known Gila chub populations occur outside the designated AMAs.

In summary, the protection afforded by these and other Federal laws and regulations is inadequate to halt the loss of the Gila chub populations and their habitat.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Gila chub populations now remain fragmented and isolated to small stream segments and are vulnerable to those natural or manmade factors that might further reduce their population size. Random events, such as drought, floods, and wildfire, can decimate populations of Gila chub. Also, small populations are subject to genetic threats, such as inbreeding depression (reduced health due to elevated levels of inbreeding) and to genetic drift (a reduction in gene flow within the species that can increase the probability of unhealthy traits; Meffe and Carrol 1994).

Wildfires pose a threat to these remaining extant populations. The frequency and intensity of wildfires in the southwestern United States has increased over the past 10 years due to drought conditions, historical wildfire suppression activities, and increased recreational activities (e.g., camping). Efforts are underway to restore natural fire regimes to forest and grass lands. Gori and Backer (in press) found that using prescribed burns to mimic the historic fire regime improved watershed condition and Gila chub habitat in Hot Springs Creek. Unfortunately, most current work on restoring fire regimes is focused on areas of urban interface, and many decades will likely pass before natural fire cycles are restored on a landscape scale across the American southwest. A century of fire suppression has been exacerbated by livestock grazing that has led to unnaturally high fuel loadings (Cooper 1960; Covington and Moore 1994; Swetnam and Baison 1994; Touchan et al. 1995; White 1985). Forests that once frequently burned at low intensities now rarely burn, but when they do, it is often at stand-replacing intensity (Covington and Moore 1994). Fires in the southwest frequently occur during, or just prior to, the summer monsoon season. As a result, fires are often followed by rain that washes ash-laden debris into streams (Rinne 2004). It is usually such debris, rather than the fires themselves, that impact, and sometimes devastate fish populations (Rinne 2004), although direct effects from fire, including changes in temperature and water chemistry, can also cause fish morality. Indirect effects of fire also include watershed alteration that can alter streamflow, water quality, riparian vegetation, and instream sediment loads, all of which can drastically alter habitat for the Gila chub. Fire suppression can cause adverse affects to Gila chub from vegetation removal and road building, using fish habitats as water sources for fire fighting, and using fire retardants that are often toxic to aquatic species (see U.S. Fish and Wildlife Service 2004b for a thorough review of the effects of fire on fishes, including Gila chub, in Arizona).

The 2003 Aspen Fire in the Santa Catalina Mountains outside Tucson devastated the Gila chub population in Sabino Canyon. This population would have been extirpated were individual fish not salvaged by the Service, AGFD, and FS, and later reestablished using the salvaged stock (AGFD 2005a). The Cave Creek Complex Fire burned over 248,000 acres in summer 2005, threatening six Gila chub populations; individual fish were salvaged from Gila chub populations in Sycamore Creek, Indian Creek, and Silver Creek (Knowles et al. 2005).

The fragmentation of habitat and isolation of Gila chub populations has decreased the opportunity for additional gene flow to occur within these populations. Currently, the Gila chub has limited representation in each of the subunits within its historical range. As described above, dewatering has resulted in fragmentation of Gila chub populations, and water demands from a rapidly increasing human population are expected to further reduce habitat available to the Gila chub, and will likely further fragment populations. Fragmentation of Gila chub habitat increases vulnerability to extinction from threats of further habitat loss and competition from nonnative fish because immigration and recolonization from adjacent populations is less likely. In depth analyses of southwestern fish occurrence patterns (including Gila chub) led Fagan et al. (2002) to conclude that the number of occurrences or populations of a species is far less significant in determining extinction risk than is fragmentation of the species. Small populations and limited gene flow can also cause inbreeding depression and genetic drift that can further reduce the health of a population (Meffe and Carroll 1994). To achieve recovery, isolated populations may need to be augmented or Gila chub may need to be reintroduced into areas where they are extirpated.

Among the most important climatic factors affecting Arizona's rivers and streams is the variable pattern of rainfall, which includes winter precipitation and summer thunderstorms that can be accompanied by flash floods. Flooding is a natural part of the hydrological cycle and is an important part of a river regime. Life cycles of plant and aquatic life are tied to annual floods. Stream biota is adapted to the seasonal cycles of flooding and low flows, which helps determine the biomass of fishes. Many native stream fishes of the southwest are morphologically and behaviorally adapted to survive periodic flooding (Harrel 1978; Meffe 1984; Minckley and Deacon 1991). However, in some cases, such as Sabino Canyon in the Santa Catalina Mountains in southeastern Arizona, these erratic flows can decimate already reduced populations.

Extensive human alteration of watersheds that has occurred over the past 150 years in the lower Colorado River basin has resulted in changes in the hydrologic regimes of the rivers and

in the geomorphology of the river channels. Seasonal fluctuations in river channels due to droughts, floods, dams, and high human demand for water has had adverse impacts on the available surface flow, which restricted the distribution of Gila chub into small, isolated populations. This fragmentation of habitat makes the Gila chub very vulnerable to threats from further habitat loss and competition from nonnative fish. Drought has significantly increased substantial changes in the natural hydrology of southwest rivers and streams, including increased peak flows and lowered water tables. Droughts in the southwest may cause increased declines in Gila chub, particularly as human demand increases for the dwindling water supplies. This human-initiated change is exacerbated by the naturally highly variable climate of the area. Peaks of flood flows have increased in volume while moving through the system more rapidly, so that damaging floods have become more frequent and more destructive. This increase in destruction is also tied to removal of riparian vegetation and encroachment of agricultural fields and buildings upon the floodplain. Flooding destruction results in increased channelization and flood control measures that further alter the stream channel and hydrologic regime. On the other hand, low flows have become lower and last longer, thus decreasing habitat quantity and quality during critical times of the year for Gila chub.

Finding

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Gila chub in determining that this species is in danger of extinction throughout all or a significant portion of its range. The habitat and range of the Gila chub are threatened with destruction, modification, and curtailment. Existing regulatory mechanisms do not provide adequate protection for these species, and other natural and manmade factors affect their continued existence. Because this species has a fragmented range, its populations are disconnected and isolated from each other, and potential habitat areas are isolated and separated by large areas of unsuitable habitat. Gila chub are therefore particularly vulnerable to localized extirpation should their habitat be degraded or destroyed. Because the connectivity of the habitat is limited, populations will have little opportunity to leave degraded habitat areas in search of suitable habitat. As a result, one contamination event, either physical or biological, or a period of drought in the aquatic habitat where the species is found could result in the loss of an entire population, of which there are few. Additionally, we have found that these fragmented populations are subject to a variety of imminent threats. Nonnative aquatic species, which can eliminate Gila chub via predation and competition, are present in many areas where there are populations of Gila chub. Arizona and New Mexico are arid States that are experiencing increasing human population growth, which is placing increasing demands on available water supplies. Surface water diversion and groundwater withdrawal threaten to eliminate numerous populations of the Gila chub. Habitat alteration due to numerous human activities threatens remaining Gila chub habitat.

The Act defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range, whereas a threatened species is defined as any species likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Without protections, the Gila chub will become extinct in the foreseeable future due to these primary threats: (1) 85 to 90 percent of Gila chub habitat has been degraded or destroyed, and further degradation and destruction is ongoing as a result of various land use activities that degrade habitat (such as livestock grazing and water use); (2) extant populations of Gila chub are small and occupy habitat that has become severely fragmented, reducing chances for recolonization; and (3) competition with, and predation from, nonnatives is a major and increasing threat. The current status of the species and the threats described above led us to determine that the Gila chub meets the definition of an endangered species pursuant to section 3 of the Act. We are therefore listing Gila chub as an endangered species in this final rule.

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) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' 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 within the area occupied by the species must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific 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)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management or protection. When the best available scientific data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. An area currently occupied by the species but was not known to be occupied at the time of listing will likely be essential to the conservation of the species and, therefore, included in the critical habitat designation.

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 data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas

are critical habitat, a primary source of information is generally 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. All information is used in accordance with the provisions of 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.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. 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, we use the best scientific data available in determining areas that are contain the features that are essential to the conservation of the Gila chub. In proposing critical habitat for the Gila chub, we solicited information from knowledgeable biologists and reviewed recommendations contained in State wildlife resource reports (e.g., Weedman et al. 1996). We also reviewed the available literature pertaining to habitat requirements, historical localities, and current localities of the Gila chub. We used data in reports submitted during section 7 consultations, research published in peer-reviewed articles and presented in academic theses and agency reports, and regional Geographic Information System (GIS) data layer coverages.

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 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 primary constituent elements required of Gila chub habitat are derived from the biological needs of the Gila chub as described below.

Space for Individual and Population Growth and Normal Behavior

Gila chub are highly secretive animals, preferring quiet deeper waters, especially pools, or they remain near cover, including terrestrial vegetation, boulders, and fallen logs (Minckley 1973). Undercut banks created by overhanging terrestrial vegetation with dense roots growing into pool edges provide ideal cover for this species (Nelson 1993). Gila chub can survive in larger stream habitat, such as the San Carlos River, and artificial habitats, like the Buckeye Canal (Stout et al. 1970; Rinne 1976). Gila chub interact with spring and small stream fishes regularly (Meffe 1985), but prefer deeper waters (Minckley 1973).

Adults often are found in deep pools and below areas with swift current, as in the Gila chub habitats found in Bass Canyon and Hot Springs in the Muleshoe Preserve area. Young-of-the-year (fish that are less than 1 year old) inhabit shallow water among plants or eddies, while older juveniles use higher-velocity stream areas (Minckley 1973; Minckley and Deacon 1991). Tiny young stay in the shallowest water among plants; juveniles move into currents for a time, then return to pools where they grow larger (Minckley 1973). Griffith and Tiersch (1989) collected Gila chubs from both riffles and pools in Redfield Canyon. Dudley (1995) found that Gila chubs in Sabino Creek were highly reclusive in winter, occupying dark interstitial (small and closely narrow) space. Adults were found in deep water with small substrates, but often away from cover. Sub-adults were more active and visible in the summer and were observed farther from cover. Sub-adults were observed more frequently in shallow areas with measurable current as water temperatures increased.

The naturally dynamic nature of riverine systems and floodplains (including riparian and adjacent upland areas) are an integral part of the stream ecosystem. For example, 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). They are responsible 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 and adjacent upland areas help ensure water courses maintain the habitat components essential to aquatic species (e.g., see FS 1979; Middle Rio Grande Biological Interagency Team 1993; Briggs 1996), including the Gila chub. We believe a relatively intact riparian area, along with periodic flooding in a relatively natural pattern, is important in maintaining the stream conditions necessary for long-term conservation of the Gila chub.

Habitats Protected From Disturbance or Representative of the Historic Geographical and Ecological Distribution of a Species

Gila chub evolved in a fish community with low species diversity and with few predators, and as a result developed limited ability to survive predation (Carlson and Muth 1989; see Factor C. ''Disease and Predation'' section above). In its habitats, the Gila chub was probably the most predatory fish and experienced little or no competition. The introduction of more aggressive and competitive nonnative fish has led to significant losses of Gila chub. Nonnative crayfish also appear to prey on and compete with Gila chub

(Carpenter 2000, 2005). A number of nonnative parasites are also a threat to Gila chub (see Factor C. ''Disease and Predation'' section above).

Food

Griffith and Tiersch (1989) observed that Gila chub are omnivorous (feed on both plants and animals). Adults appear to be principally carnivorous, feeding on large and small terrestrial and aquatic insects and sometimes other small fishes (Rinne and Minckley 1991). Smaller individuals often feed on organic debris and aquatic plants, especially filamentous (threadlike) algae, and less intensely on diatoms (unicellular or colonial algae).

Griffith and Tiersch (1989) dissected 27 Gila chub stomachs from Refield Canyon, finding aquatic material that included speckled dace (*Rhinichtys osculus*) and dobsonfly nymphs (order Megaloptera). Terrestrial insects included primarily ants, with some caterpillars and beetles. Diatoms (algae) were most common by volume. Bottom feeding may also occur, as suggested by presence of small gravel particles.

Water Quality

Water quality is also an issue for the Gila chub. Excessive sedimentation is the primary threat to water quality for the Gila chub (as discussed in Factor A. ''The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range'' section above). In addition, mining activity can also introduce contaminants. For example, Gila chub that are found in Mineral Creek are limited to waters that are above a large mine. Water from the mine is drained back into Mineral Creek and no Gila chub have been found at this area.

A recent study of Gila chub in Sabino and Cienega creeks documented water quality at various times of the year and found that water temperature, pH, dissolved oxygen, and conductivity ranged from 10.5 °C to 25.19 °C, 7 to 9.5, 6.22 mg/l to 10.13 mg/l, and 125 mmhos to 438 mmhos, respectively, in Sabino Creek. Gila chub were captured in Cienega Creek in habitats with mid-day water temperature, pH, dissolved oxygen, and conductivity ranging from 11.17 °C to 23.2 °C, 6.58 to 8.9, 1.26 mg/l to 10.25 mg/l, and 469 mmhos to 760 mmhos, respectively.

Reproduction and Rearing of Offspring

Spawning probably occurs over beds of submerged aquatic vegetation or root wads (Weedman *et al.* 1996). Nelson (1993) attempted to identify cover and substrate types, duration of spawning, breeding color changes, and water temperature during spawning in Cienega Creek, Arizona. He concluded that warmer water temperatures, 20 to 24 degrees Celsius (C) (68 to 75.2 degrees Farenheit (F)), appear to increase breeding color intensities. Thus, warmer water temperatures may contribute to successful spawning. For the roundtail chub (*Gila robusta*), a close relative of the Gila chub, spawning has been documented at temperatures of 14 to 24 °C (57.2 to 75.2 °F), with 18 to 20 °C (64.4 to 68 °C) most commonly noted (Bezzerides and Bestgen 2002). A recent study of culture of Gila chub found that 20 °C to 29 °C was suitable for rearing juvenile Gila chub, with higher temperatures resulting in faster growth (A. Schultz, University of Arizona, in litt. 2005).

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the Gila chub's primary constituent elements are:

(1) Perennial pools, areas of higher velocity between pools, and areas of shallow water among plants or eddies all found in headwaters, springs, and cienegas, generally of smaller tributaries;

(2) Water temperatures for spawning ranging from 17 to 24 °C (62.6 to 75.2 °F), and seasonally appropriate temperatures for all life stages (varying from approximately 10 °C to 30 °C).

(3) Water quality with reduced levels of contaminants, including excessive levels of sediments adverse to Gila chub health, and adequate levels of pH (*e.g.* ranging from 6.5 to 9.5), dissolved oxygen (*e.g.* ranging from 3.0 to 10.0) and conductivity (*e.g.* 100 to 1000 mmhos).

(4) Food base consisting of invertebrates (*e.g.* aquatic and terrestrial insects) and aquatic plants (*e.g.* diatoms and filamentous green algae);

(5) Sufficient cover consisting of downed logs in the water channel, submerged aquatic vegetation, submerged large tree root wads, undercut banks with sufficient overhanging vegetation, large rocks and boulders with overhangs, a high degree of streambank stability, and a healthy, intact riparian vegetation community;

(6) Habitat devoid of nonnative aquatic species detrimental to Gila chub or habitat in which detrimental nonnatives are kept at a level that allows Gila chub to continue to survive and reproduce; and

(7) Streams that maintain a natural flow pattern including periodic flooding.

Each of the areas designated in this rule have been determined to contain sufficient PCEs to provide for one or more of the life history functions of the Gila chub. In some cases, the PCEs exist as a result of ongoing Federal actions. As a result, ongoing Federal actions at the time of designation will be included in the baseline in any consultation conducted subsequent to this designation.

Criteria for Defining Critical Habitat

In designating critical habitat for the Gila chub, we reviewed information within our files and recommendations contained in State wildlife resource reports (*e.g.*, Weeman *et al.* 1996). We also reviewed the available scientific literature pertaining to habitat requirements, historic localities, and current localities for this species. We are not aware of any reliable information that is currently available to us that was not considered in this designation process. This final determination relies on our best assessment of areas with features that are essential to the conservation of the species. Much remains to be learned about this species; should credible new information become available that contradicts this designation, we will reevaluate our analysis and, if appropriate, propose to modify this critical habitat designation, depending on available funding and staffing.

We are designating critical habitat on lands that we have determined are occupied at the time of listing and have the features that are essential to the conservation of the species, and those additional areas found to be essential to the conservation of the species. All of the critical habitat areas are within the area historically occupied by the species and require special management consideration and protection. We note that one area included in this designation is not occupied (see ''Justification for Including Unoccupied Areas'' below).

Important considerations in selection of this 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 representation of major portions of the species' historical range. Each area contains stream reaches that are in close proximity to nearby stream reaches with interconnected waters so that Gila chub 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. Additionally, these reaches play a vital

role in the overall health of the aquatic ecosystem and, therefore, the integrity of upstream and downstream Gila chub habitats.

Stabilization of the Gila chub at its present population level and distribution will not achieve conservation. The overall trend in the status of the Gila chub has been characterized by dramatic declines in numbers and range despite the fact that this species evolved in rapidly fluctuating, harsh environments. Known Gila chub populations remain fragmented and isolated to essentially very small stream segments and are vulnerable to those natural or manmade factors that might further reduce population size. If recovery actions fail to reverse the decline of Gila chub in its historical range, the species' vulnerability to catastrophic events, such as the introduction of the green sunfish or a prolonged period of low or no flow, would increase. Recovery through protection and enhancement of the existing populations, plus reestablishment of populations in suitable areas of historical range, are necessary for the species' survival and recovery. As previously stated, repatriation of Gila chub from extant populations will be evaluated as a means to recover the Gila chub in unoccupied portions of its historical habitat. Future restoration efforts will occur, pending completion of an approved recovery plan and genetic work to determine the suitability of using Gila chub from the extant populations in repatriation efforts.

We divided the overall historical range into seven river subareas, and each critical habitat stream segment was derived from within these main river subareas. We have used these main river areas for points of reference in defining our critical habitat boundaries, but we are designating critical habitat only in tributaries of these main rivers, and not the main rivers themselves. The designated critical habitat constitutes our best assessment of areas that contain the essential features (PCEs) for the conservation of the Gila chub and that may require special management or protection.

When determining critical habitat boundaries, we made every effort to avoid the designation of developed areas such as buildings, paved areas, boat ramps and other structures that lack PCEs for Gila chub. Any such structures do not contain the PCEs and are not considered part of the critical habitat designation. This also applies to the land on which such structures sit directly. Therefore, Federal actions limited to these areas would not trigger section 7 consultations, unless they affect the species and/or PCEs in adjacent critical habitat.

Segments were designated based on sufficient PCEs being present to support Gila chub life processes. Some segments contain all PCEs and support multiple life processes. Some segments contain only a portion of the PCEs necessary to support the particular use of that habitat by the Gila chub. Where a subset of the PCEs are present (*e.g.*, water temperature during spawning) it has been noted that only PCEs present at designation will be protected.

A brief discussion of each area designated as critical habitat is provided in the area descriptions below. Additional detailed documentation concerning these areas is contained in our supporting record for this rulemaking.

Justification for Including Unoccupied Areas

As background for this discussion, we note that during the development of this designation we documented all streams for which there were historical records for Gila chub. We found that the 1996 AGFD status report on the species had captured most of the historical Gila chub records, with the exception of one, Haunted Canyon, which was collected by R.R. Miller in 1959 (UMMZ collection record 176179). We then documented all currently known occupied streams by consulting agencies (including AGFD and NMGF) and university researchers, and by conducting our own surveys. This information is portrayed in Table 1 above, and summarized in the ''Background'' section. Based on our evaluation of existing information, we have concluded that there is one area, that includes 6.3 km (3.9 mi) of Turkey Creek (AZ) that is unoccupied (*i.e.*, does not meet our definition of occupied, as we do not have records to support occupancy within the last 5 years), but meets our definition of critical habitat in that it is essential to the conservation of species. Gila chub were last detected in Turkey Creek (AZ) in 1991; thus the species occupied this stream in recent times. We performed surveys of Turkey Creek in 2005 and determined that it contains sufficient PCEs to provide for one or more of the life history functions of the Gila chub. We believe that this stream could support Gila chub, and we are working with the AGFD to reestablish Gila chub into this system.

Critical habitat is defined in section 3 paragraph (5)(A) 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 consideration or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. As stated in the proposed rule (August 9, 2002; 67 FR 51948), reestablishment of populations into suitable areas of the Gila chub's historical range will be necessary for the conservation of the species. Protecting unoccupied areas, such as Turkey Creek in this case by designating it as critical habitat, can help to ensure that they will maintain the existing PCEs and provide for the future reestablishment of Gila chub for the purposes of recovery. We believe Turkey Creek represents important habitat that: (1) Has been documented to have been recently occupied by the species; (2) are in proximity to occupied areas and hydrologically connected to them during wet years; (3) contains sufficient PCEs to support the life history functions of the Gila chub; and (4) as noted above, are currently the subject of a Service/AZGDF partnership to reestablish the Gila chub in this area.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing contain the primary constituent elements and may require special management considerations or protection. We believe each area included in this final designation requires special management and protections based upon our five factor threats analysis provided above. Table 1 also identifies the specific threats to each area.

Special management considerations for each area will depend on the threats to the Gila chub in that critical habitat area. For example, special management that addresses the threat of nonnative species could include efforts to remove nonnative species from a creek, via chemical compounds that kill fish (*e.g.* rhotenone) but otherwise do not harm the environment, and construction of fish barriers that prevent the upstream movement of nonnative fishes into Gila chub habitat. Special management that addresses the threat of fire could include using prescribed fire to reduce fuel loads and prevent catastrophic wildfires, and salvaging individuals from populations that are threatened by wildfire. Livestock grazing is only a threat to Gila chub if not properly

managed. Proper management may include the use of fencing, rest rotation grazing systems, and other improvements to allotments such as new water tanks. With regard to water use, maintaining high quality and adequate quantities of water for all life stages of Gila chub may involve special management actions such as retaining an adequate buffer of riparian vegetation to help filter out sediment and contaminants, and maintaining streamflow via sustainable levels of ground and surface water use. We have included below in our description of each of the critical habitat areas for the chub a description of the threats occurring in that area requiring special management or protections.

Critical Habitat Designation

We are designating approximately 160.3 mi (258.1 km) of stream reaches as critical habitat. Critical habitat vital for the conservation of Gila chub includes: Cienegas, headwaters, spring-fed streams, perennial streams (Vives 1990), and spring-fed ponds (Minckley 1973). Historically, the range of the Gila chub covered over one-quarter of southeastern Arizona. The Gila chub now occupies about 10 to 15 percent of its historical range. Current populations of Gila chub are now scattered in small disconnected habitats throughout the following counties: Grant County, New Mexico, and Yavapai, Gila, Coconino, Pinal, Graham, Pima, Santa Cruz, Cochise, and Greenlee counties, Arizona.

For each stream reach, the upstream and downstream boundaries are described below. Additionally, critical habitat includes the stream channels within the identified stream reaches and areas within these reaches potentially inundated during high flow events. Critical habitat includes the area of bankfull width plus 300 feet on either side of the banks. 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). 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). We chose the bankfull width because bankfull discharge and width are quantifiable measures as are required to accurately classify a stream channel and make sound decisions about management of the stream and its watershed. This 300-foot width defines the lateral extent of each area of critical habitat that contains sufficient PCEs to provide for one or more of the life history functions of the Gila chub.

We determined the 300-foot lateral extent for several reasons. First, the implementing regulations of the Act require that critical habitat be defined by reference points and lines as found on standard topographic maps of the area (50 CFR 424.12). Although we considered using the 100-year floodplain, as defined by the Federal Emergency Management Agency (FEMA), we found that it was not included on standard topographic maps, and the information was not readily available from FEMA or from the Army Corps of Engineers for the areas we are proposing to designate. We suspect this is related to the remoteness of many of the stream reaches where the Gila chub occurs. Therefore, we selected the 300-foot lateral extent, rather than some other delineation, for three biological reasons: (1) The biological integrity and natural dynamics of the river system are maintained within this area (*i.e.*, the floodplain and its riparian vegetation provide space for natural flooding patterns and latitude for necessary natural channel adjustments to maintain appropriate channel morphology and geometry, store water for slow release to maintain base flows, provide protected side channels and other protected areas, and allow the river to meander within its main channel in response to large flow events); (2) conservation of the adjacent riparian area also helps provide essential nutrient recharge and protection from sediment and pollutants; and (3) vegetated lateral zones are widely recognized as providing a variety of aquatic habitat functions and values (*e.g.*, aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality (see U.S. Army Corps of Engineers' final notice concerning Issuance and Modification of Nationwide Permits, March 9, 2000, 65 FR 12818–12899).

This designation takes into account the naturally dynamic nature of riverine systems and recognizes that floodplains (including riparian areas) are an integral part of the stream ecosystem. For example, riparian areas are seasonally flooded habitats (*e.g.*, 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). They are responsible 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 areas help ensure water courses maintain the habitat components essential to aquatic species (Briggs 1996), including the Gila chub. Habitat quality within the mainstem river channels in the historical range of the Gila chub 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 things, the floodplain provides space for natural flooding patterns and latitude for necessary natural channel adjustments to maintain channel morphology and geometry. We believe a relatively intact riparian area, 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 Gila chub.

Conservation of the river channel alone is not sufficient to ensure the survival and recovery of the Gila chub. For the reasons discussed above, we believe the riparian corridors adjacent to the river channel provide an important function for the protection and maintenance of critical habitat.

The final designation includes seven river areas with a total of 160.3 mi (258.1 km) of stream reaches (see Table 2 below). We are not designating mainstem river channels that may have been historically used by Gila chub as migration corridors and are currently considered outside of the occupied range of the Gila chub. In addition, most of these major rivers no longer contain suitable habitat to serve as migration corridors for movement of Gila chub. Instead, we are designating certain small tributary streams within the watershed of the rivers listed below. The seven areas designated as critical habitat are: (1) Upper Gila River Area; (2) Middle Gila River Area; (3) Babocomari River Area; (4) Lower San Pedro River Area; (5) Lower Santa Cruz River Area Area; (6) Upper Verde River Area; and (7) Aqua Fria River Area.

Tables 2, 3, and 4 below show the lands being designated as critical habitat by landowner and State, by individual Federal landowner for each State, and by ownership of lands excluded pursuant to section 4(b)(2) of the Act, respectively.

TABLE 2.—APPROXIMATE CRITICAL HABITAT IN STREAM KILOMETERS (KM) AND MILES (MI) BY STATE AND LANDOWNER

Land owner	New Mexico km (mi)	Arizona km (mi)	Total km (mi)
Federal	18.9 (11.7)	153.1 (95.1)	172.0 (106.8)
State	0	17.5 (10.9)	17.5 (10.9)
County	0	13.6 (8.4)	13.6 (8.4)
Private	4.0 (2.5)	51.0 (31.7)	55.0 (34.2)
Total	22.9 (14.2)	235.2 (146.1)	258.1 (160.3)

TABLE 3.—APPROXIMATE CRITICAL HABITAT IN STREAM KILOMETERS (KM) AND MILES (MI) BY INDIVIDUAL FEDERAL LANDOWNERS

Land owner	New Mexico km (mi)	Arizona km (mi)	Total km (mi)
Gila National Forest	18.9 (11.7)	0	18.9 (11.7)
Apache-Sitgreaves National Forest	0	50.5 (31.4)	50.5 (31.4)
Coconino National Forest	0	16.9 (10.5)	16.9 (10.5)
Coronado National Forest	0	13.9 (8.7)	13.9 (8.7)
Prescott National Forest	0	21.0 (13.1)	21.0 (13.1)
Tonto National Forest	0	7.4 (4.6)	7.4 (4.6)
Subtotal	18.9 (11.7)	109.7 (68.3)	128.6 (80.0)
BLM—Phoenix District	0	7.7 (4.8)	7.7 (4.8)
BLM—Safford District	0	11.9 (7.4)	11.9 (7.4)
BLM—Tucson District	0	23.7 (14.8)	23.7 (14.8)
Subtotal	0	43.4 (27.0)	43.4 (27.0)
Total	18.9 (11.7)	153.1 (95.1)	172.0 (106.8)

TABLE 4.—APPROXIMATE CRITICAL HABITAT EXCLUDED IN THIS FINAL RULE ON THE BASIS OF SECTION 4(B)(2) OF THE ACT, IN STREAM KILOMETERS (KM) AND MILES (MI) BY LANDOWNER

Land owner	New Mexico km (mi)	Arizona km (mi)	Total km (mi)
Tribal	0	47.1 (29.3)	47.1 (29.3)
BLM	0	15.8 (9.8)	15.8 (9.8)
Private	0	14.2 (8.9)	14.2 (8.9)
Total	0	77.1 (48.0)	77.1 (48.0)

Below we present brief descriptions of all areas and the segments within each area, reasons why each area and segment meets the definition of critical habitat for the Gila chub, a discussion of occupancy and a general description of land ownership. See Table 1 for specific occupancy data and sources of information; see the maps and legal description of critical habitat in the ''Regulation Promulgation'' section below for more specific coordinate information.

Area 1: Upper Gila River Area

This area lies in Grant County, New Mexico, and Greenlee County, Arizona. Critical habitat includes several tributary streams: Turkey Creek, Dix Creek, Harden Cienega Creek, Eagle Creek, and East Eagle Creek. All of these segments are currently occupied by the Gila chub. These tributaries represent the few remaining tributaries of a low desert river that currently provide the necessary habitat for the Gila chub, in a largely natural state. Threats to this critical habitat area requiring special management and protections include fire, grazing, and nonnative species (see Table 1 above).

a. Turkey Creek (New Mexico)—22.3 km (13.8 mi) of creek extending from the edge of the Gila Wilderness boundary and continuing upstream into the Gila Wilderness in the Gila National Forest. Turkey Creek contains one or more of the primary constituent elements, including perennial pools and the necessary vegetation that provides cover. Turkey Creek supports a population of Gila chub; surveys confirmed the species presence in 2005 (P. C. Marsh, ASU, in litt. 2005). Land ownership is entirely Gila National Forest and private.

b. Eagle Creek and East Eagle Creek—39.2 km (24.4 mi) of creek extending from the confluence of Eagle Creek with an unnamed tributary upstream to its confluence with East Eagle Creek, and including East Eagle Creek to its headwaters just south of Highway 191. Nine other native fishes known to

occupy Eagle Creek include loach minnow (*Tiaroga cobitis*), spikedace (*Meda fulgida*), longfin dace (*Agozia chrysogaster*), speckled dace, Sonora sucker (*Catostomus insignis*), desert sucker (*Catostomus clarkii*), razorback sucker, roundtail chub, and an undetermined trout species (*Oncorhynchus* sp.). This upper portion of Eagle Creek contains one or more of the primary constituent elements, including a series of permanent pools with riffle (shallow area in a streambed causing ripples), run areas between these pools, and the necessary vegetation that provides cover. A diversion dam just below the end of the proposed critical habitat reach acts as a barrier to prevent nonnatives from invading from the Gila River. Periodic flooding appears to decrease the presence of nonnatives, subsequently decreasing the impacts to native fishes by nonnatives in Eagle Creek above this diversion dam (Marsh *et al.* 1990). East Eagle Creek contains one or more of the primary constituent elements, including a series of permanent pools with riffle, run areas between these pools, and the necessary vegetation that provides cover. East Eagle Creek is also hydrologically connected to Eagle Creek. Gila chub were most recently documented in Eagle Creek in 2005 (Marsh 2005). Land ownership for this segment is predominantly FS, but includes some private land.

c. Harden Cienega Creek—22.6 km (14.0 mi) of creek extending from its confluence with the San Francisco River in and continuing upstream to its headwaters. Harden Cienega Creek contains one or more of the primary constituent elements, including perennial pools and the necessary vegetation that provides cover. AGFD surveyed this stream in 2005 and found Gila chub to be abundant (McKell 2005). Land ownership for this segment is Apache-Sitgreaves National Forest, Gila National Forest, and private inholdings.

d. Dix Creek—Portions of the Creek beginning 1.0 mile upstream from its confluence with the San Francisco River at a natural rock barrier and continuing upstream for 0.9 km (0.6 mi.) to the confluence of the right and left forks of Dix Creek. This critical habitat area also includes the Left Prong of Dix Creek as it continues upstream 2.0 km (1.2 mi), and the Right Prong of Dix Creek as it continues upstream 4.8 km (3.0 mi). The barrier at the lower end of Dix Creek appears to be effective in isolating the upper drainages from nonnative fish. Dix Creek contains one or more of the primary constituent elements, including perennial pools, and is devoid of nonnatives. AGFD surveyed this stream in 2005 and found Gila chub to be abundant (McKell 2005). Land ownership for these segments is entirely Apache-Sitgreaves National Forest.

Area 2: Middle Gila River Area

This area lies in Graham, Gila, and Pinal counties, Arizona. Critical habitat includes a tributary stream as critical habitat: Mineral Creek. The Mineral Creek population of Gila chub fills a gap of what was previously determined unoccupied habitat within the Middle Gila River Area. This may help to expand future populations of Gila chub in the Middle Gila River Area. Critical habitat within Mineral Creek consists of 14.4 km (8.9 mi) of creek extending from the confluence with Devil's Canyon upstream to its headwaters. Gila chub currently occupy Mineral Creek, and this area contains one or more of the primary constituent elements, including perennial pools, the necessary vegetation that provides cover, and adequate water quality. Below this area, Mineral Creek flows through a mine, where it has been contaminated and does not provide suitable habitat. AGFD documented Gila chub in Mineral Creek in 2000 (Weedman 2000). The area below the mine is not being designated as critical habitat. Land ownership for this segment is Tonto National Forest, Arizona State lands, and private. Threats to this critical habitat area requiring special management and protections include fire, grazing, and nonnative species (see Table 1 above).

Area 3: Babocomari River Area

This area lies in Santa Cruz County, Arizona. Historically the Babocomari River was a perennial stream which flowed through cienegas and marshlands all the way to the San Pedro River. However, livestock overgrazing destroyed much of the river. In 1995, AGFD found that the only water use was a large impoundment in the river, on the Babocomari Ranch. Perennial flows begin upstream from this impoundment near T–4 Spring. Gila chub were first collected from the Babocomari River in 1892 near Fort Huachuca Military Reservation and again in 1950, approximately 3.5 mi below the Babocomari Ranch (Weedman et al. 1996). Tributaries to this area include O'Donnell Canyon and Turkey Creek, which are designated as critical habitat. Threats to this critical habitat area requiring special management and protections include fire, grazing, and nonnative species (see Table 1 above).

a. O'Donnell Canyon—10.0 km (6.2 mi) of creek extending from its confluence with Turkey Creek upstream to the confluences of Western, Middle, and Pauline Canyons. O'Donnell Canyon provides the full range of primary constituent elements necessary for the conservation of the Gila chub. AGFD surveyed O'Donnell Creek and found Gila chub in O'Donnell Creek, although at very low numbers, in 2004 (Dean Foster, AGFD, in litt. 2005). Land ownership is BLM, Coronado National Forest, and private.

b. Turkey Creek—6.3 km (3.9 mi) of creek extending from its confluence with O'Donnell Canyon upstream to where Turkey Creek crosses AZ Highway 83. Turkey Creek contains one or more of the primary constituent elements, including perennial pools, the necessary vegetation that provides cover, and adequate water quality. Gila chub have not been detected in Turkey Creek since 1991, although in wet years this segment is connected to occupied habitat in O'Donnell Creek (Weedman *et al.* 1996). Land ownership is Coronado National Forest and private lands.

Area 4: Lower San Pedro River Area

This area lies in Graham and Cochise counties, Arizona. Gila chub currently exist in several tributaries of this segment of the San Pedro River. Historically, Gila chub most likely occurred on both sides of the lower San Pedro River; however, documentation of Gila chub presence only exists for the east-side drainages. We are only designating critical habitat for the east-side drainage areas. Threats to this critical habitat area requiring special management and protections include fire, grazing, and nonnative species (see Table 1 above).

a. Bass Canyon—5.5 km (3.4 mi) of creek extending from its confluence with Hot Springs Canyon upstream to the confluence with Pine Canyon. Perennial water was documented by Dave Gori (TNC, in litt., 1995) for this stream from the confluence with Hot Springs Canyon upstream 4.8 km (3.0 mi). The remainder of the stream was dry for 8 km (5.0 mi). All the State land in the Muleshoe Preserve was traded to the BLM and is managed by TNC. Beginning in 1991, biologists with TNC established eight fixed sample stations in Bass Canyon, five in Hot Springs, and three in Double R Canyon. Beginning in 1992, random pools were also sampled in the streams each year. Gila chub were collected from 1992 to 2003 in Bass Canyon (B. Rogers, TNC, in litt. 2005). Bass Canyon contains one or more of the primary constituent elements, including perennial pools, the necessary vegetation that provides cover, and adequate water quality. Land ownership includes BLM and privately owned lands.

b. Hot Springs Canyon—10.5 km (6.5 mi) of creek extending from its confluence with Bass Canyon downstream. The occurrence of Gila chub within this reach of Hot Springs Canyon is sporadic due to the limited number of pools; however, Gila chub are commonly found where good pool habitat exists in Hot Springs Canyon (per. comm. TNC, 2000). Hot Springs Canyon contains one or more of the primary constituent elements, including perennial pools, the necessary vegetation that provides cover, and adequate water quality. Gila chub were found in Hot Springs Canyon in 2004 (B. Rogers, TNC, in litt. 2005). Land ownership includes BLM, State lands, and private.

c. Redfield Canyon—9.8 km (6.1 mi) of creek extending from its confluence with Sycamore Canyon downstream. The first documented collection of Gila chub in Redfield Canyon was in 1961. A number of collections of Gila chub occurred from 1976 to 1983, and most recently in 2003. Redfield Canyon contains one of the few populations of Gila chub for which population studies have been conducted (Griffith and Tiersch 1989). Fall Fish Count (FFC) sites were established and surveyed by volunteers from 1988 to 1990. TNC established monitoring stations from 1991 to 1994. Gila chub were collected each year, and they were the most abundant species caught in 1991 (72% of the total fish caught) (Weedman *et al.* 1996). TNC surveyed Redfield Canyon in November 2001, and Gila chub were documented. This segment of Redfield Canyon is remote and relatively pristine. Additionally, no livestock grazing is permitted, which contributes to the existence of the primary constituent elements for the Gila chub. Redfield Canyon has an abundant and healthy Gila chub population. Redfield Canyon contains one or more of the primary constituent elements, including perennial pools, the necessary vegetation that provides cover, and adequate water quality. Land ownership includes BLM, State lands, and private.

Area 5: Lower Santa Cruz River Area

This area lies in Pima County, Arizona. Tributaries included in the critical habitat designation are Cienega Creek, Mattie Canyon, Empire Gulch, and Sabino Canyon. Threats to this critical habitat area requiring special management and protections include fire, grazing, and nonnative species (see Table 1 above).

a. Cienega Creek—There are two segments of critical habitat designated in Cienega Creek. The first segment is in the lower part of the drainage, and includes 14.2 km (8.8 mi) of creek extending from where Cienega Creek becomes Pantano Wash to where it crosses Interstate 10. The second segment is in the upper part of the drainage and extends from its confluence with Empire Gulch on BLM lands to a point 13.6 km (8.4 mi) downstream. Perennial water exists within the lower segment in the Cienega Creek Natural Preserve managed by the Pima County Flood Control District. In June 2005, Gila chub were documented in this lower segment of Cienega Creek. The upper segment of Cienega Creek is considered to be one of the finest natural habitats for the Gila chub, and was the only stream segment with a population of Gila chub considered stable-secure by Weedman et al. (1996). Fish inventories of Cienega Creek and its tributaries, Mattie Canyon and Empire Gulch, have been conducted since 1989 by seining, electrofishing, and visual observation. Composition of native fish in Cienega Creek varies from its upper to lower reaches, as well as from year to year. Fish sampling is difficult in Cienega Creek because of the large volume of vegetation cover, great pool depths, and undercut banks. Visual observation and electrofishing data show that a large population of adult Gila chub occupy the upper perennial segment of Cienega Creek. Visual observations of adult Gila chub made for the aquatic habitat inventory in 1989 and 1990 found 368 chub along the upper perennial length of Cienega Creek. This estimate is undoubtedly low due to water turbidity in some reaches, vegetation cover, and the secretive nature of Gila chub. Cienega Creek contains one or more of the primary constituent elements, including perennial pools, the necessary vegetation that provides cover, and adequate water quality. Gila chub were found in the upper segment of Cienega Creek in 2004 (D. Foster, AGFD, pers. comm. 2005) and in the lower segment in 2005 (D. Duncan, Service, in litt. 2005). Land ownership for the upper segment is BLM. The lower segment is owned by Pima County.

b. Mattie Canyon—4.0 km (2.5 mi) of creek extending from its confluence with Cienega Creek upstream to the BLM Boundary. Gila chub were observed in Mattie Canyon in 2005 (J. Simms, BLM in litt. 2005). Mattie Canyon contains one or more of the primary constituent elements, including perennial pools, the necessary vegetation that provides cover, and adequate water quality. Land ownership is BLM.

c. Empire Gulch—5.2 km (3.2 mi) of creek extending from its confluence with Cienega Creek continuing upstream through BLM lands. The majority of this reach is on BLM land and contains one or more of the primary constituent elements, including perennial pools, the necessary vegetation that provides cover, and adequate water quality. Gila chub were documented in Empire Gulch in 1995 and in 2001 (67 FR 51948). Land ownership is BLM.

d. Sabino Canyon—11.1 km (6.9 mi) of creek extending from the southern boundary of the Coronado National Forest upstream to its confluence with the West Fork of Sabino Canyon. Sabino Canyon is managed by the Coronado National Forest. Sabino Canyon was devastated by the Aspen Fire in July 2003. Gila chub were salvaged during the fire, and later returned in May 2005 (AGFD 2005a). Sabino Canyon contains one or more of the primary constituent elements, including perennial pools and adequate water quality. Land ownership is Coronado National Forest.

Area 6: Upper Verde River Area

This area lies in Yavapai County, Arizona. We are designating four tributaries within the Verde River drainage as critical habitat: Walker Creek, Red Tank Draw, Silver Creek, and Williamson Valley Wash. The Upper Verde River is the northwestern most part of the Gila chub's historical range. Conserving these Gila chub populations will help maintain representation of the species throughout its historical range. All of these segments have at least one of the primary constituent elements present. Threats to this critical habitat area requiring special management and protections include fire, grazing, residential development, water use, and nonnative species (see Table 1 above).

a. Walker Creek—7.6 km (4.7 mi) of creek extending from Prescott National Forest Road 618 upstream to its confluence with Spring Creek. The earliest known collection of Gila chub was in 1978 by J. Rinne (Weedman 1996). Walker Creek was surveyed in 1994 by AGFD at five different locations; Gila chub were collected at three of those locations. Gila chub were collected in Walker Creek by Service biologists in 2005 (Service data). The ephemeral nature of the lower end of Walker Creek appears to be limiting the invasion of nonnative species from Wet Beaver Creek (Weedman et al. 1996); the only nonnative species found in 2005 were virile crayfish (*Orconectes virilis*). Walker Creek contains one or more of the primary constituent elements, including perennial pools and the necessary vegetation that provides

cover. Land ownership is Coconino National Forest and private lands.

b. Red Tank Draw—11.1 km (6.9 mi) of creek extending from the National Park Service boundary just upstream of its confluence with Wet Beaver Creek upstream to the confluence of Mullican and Rarick canyons. Red Tank Draw is an intermittent stream that offers abundant Gila chub habitat in the form of perennial pools. Gila chub were documented in Red Tank Draw in 1996 by AGFD, and by the Service in 2005. Green sunfish and virile crayfish are present in the downstream reaches of this stream segment. Red Tank Draw contains one or more of the primary constituent elements, including perennial pools and the necessary vegetation that provides cover. Land ownership is Coconino National Forest and private.

c. Spring Creek—5.7 km (3.6 mi) of creek including all non-private lands extending from the boundary of Forest Service land and continuing upstream to the Arizona Highway 89A crossing. Gila chub were documented in 2005 in Spring Creek by Service biologists (Service data). Spring Creek contains all of primary constituent elements, with the exception of habitat free from nonnative aquatic species; virile crayfish are the only nonnative present. Four other native fish species occur in Spring Creek: speckled dace, longfin dace, Sonora sucker, and desert sucker. Land ownership is Coconino National Forest and private.

d. Williamson Valley Wash—7.2 km (4.4 mi) of creek extending from the gauging station upstream to the crossing of the Williamson Valley Road. In 1990 Williamson Valley Wash was surveyed for Gila chub and collected on the Matli Ranch, and a large stretch of stream had perennial water (Weedman et al. 1996). In July 2001, Williamson Valley Wash was resurveyed, and Gila chub were abundant (Bryan Bagley in litt. 2001), although they appear to have become much more rare since that time (Bill Leibfried, in litt. 2005). Williamson Valley Wash contains the full range of primary constituent elements necessary for the conservation of the Gila chub. Williamson Valley Wash is entirely on private lands.

Area 7: Agua Fria River Area

This area lies in Yavapai County, Arizona. There are six tributaries in the Agua Fria River that are designated as critical habitat, all of which are currently occupied by Gila chub: Little Sycamore Creek, Sycamore Creek, Indian Creek, Silver Creek, Lousy Canyon, and Larry Creek. The Agua Fria River Area represents part of the upper northwest area of the historical range of the Gila chub, and current Gila chub populations in the six drainages of this river area are healthy. There have been no reports of any diseases associated with the Gila chub in this area. Survey results indicate a good representation of all age classes. However, the Cave Creek Complex Fire burned over 248,000 acres in summer 2005, threatening Gila chub populations in this area; individual fish were salvaged from Gila chub populations in Sycamore Creek, Indian Creek, and Silver Creek (Knowles et al. 2005). Gila chub were introduced to Larry Creek and Lousy Canyon as a conservation action in July 1995 (Weedman et al. 1996) by the BLM. Conserving these Gila chub populations will help maintain representation of the species throughout its historical range. Threats to this critical habitat area requiring special management and protections include fire, grazing, and nonnative species (see Table 1 above).

a. Little Sycamore Creek—4.7 km (2.9 mi) of creek extending from its confluence with Sycamore Creek upstream. This segment is intermittent but always contains some habitat in the form of perennial pools; Gila chub expand into larger habitats when they are available. Little Sycamore Creek contains one or more of the primary constituent elements, including perennial pools, the necessary vegetation that provides cover, and adequate water quality. Gila chub were documented in Little Sycamore Creek in 2003 (A. Silas, FS, pers. comm. 2005). Land ownership is Prescott National Forest and private.

b. Sycamore Creek—18.3 km (11.4 mi) of creek extending from its confluence with Little Sycamore Creek upstream to Nelson Place Spring. Sycamore Creek is perennial throughout most of its length, with the last 3 km (2 mi) being intermittent. Gila chub were documented in Sycamore Creek in 2005 when they were removed as part of a salvage effort to secure the population from the effects of the Cave Creek Complex Fire (Hedwall et al. 2005). In surveys in 2002, there were no nonnatives collected and all age classes were represented. Gila chub distribution was limited to the area between the Double T Waterfall and the Rock Bottom Box totaling a length of 5 km (3.0 mi) of habitat. Both of these sites are effective fish barriers and seem to have served to prevent nonnatives from invading this upper section of Sycamore Creek. Due to the remoteness of this area, it is unlikely that additional threats to the existing Gila chub population will be of concern. Livestock grazing is very limited in the upper portion of this reach due to the canyons and inaccessibility to the stream. However, below the fish barriers, livestock have access to these areas. Sycamore Creek contains one or more of the primary constituent elements, including perennial pools, the necessary vegetation that provides cover, and adequate water quality. Land ownership is Prescott National Forest and private.

c. Indian Creek—8.4 km (5.2 mi) of creek extending from Upper Water Springs downstream into BLM lands. Gila chub were first collected in Indian Creek in May 1995. Gila chub were salvaged from Indian Creek in 2005 to secure the population from the Cave Creek Complex Fire (J. Voeltz, AGFD in litt. 2005). Similar to Little Sycamore Creek, this segment is intermittent, but there is always some habitat available in the form of perennial pools; Gila chub expand into larger habitats when they are available. Indian Creek contains one or more of the primary constituent elements, including perennial pools and the necessary vegetation that provides cover (per. comm. BLM 2002). Land ownership is BLM, Prescott National Forest, and private.

d. Silver Creek—8.5 km (5.3 mi) of creek extending from a spring on FS lands downstream onto BLM lands, all of which is located above a natural waterfall/barrier located 4 km (2.5 mi) above the confluence with the Agua Fria River. The earliest record of Gila chub collected in Silver Creek was in 1980. Due to high recruitment of young-of-the-year, Silver Creek was the source of Gila chub that were translocated to Larry Creek and Lousy Canyon in July 1995. Gila chub were salvaged from Silver Creek to protect the population from the Cave Creek Complex Fire in 2005 (D. Weedman, AGFD in litt. 2005). Silver Creek contains one or more of the primary constituent elements, including perennial pools and the necessary vegetation that provides cover (per. comm. BLM 2002). Land ownership is Tonto National Forest and BLM.

e. Lousy Canyon—Extending from the confluence of an unnamed tributary upstream to the fork with an another unnamed tributary approximately 0.6 km (0.4 mi) upstream. In 1995, BLM introduced Gila chub from Silver Creek into Lousy Canyon. In 2005, the Service surveyed the stream and observed Gila chub. Lousy Creek contains one or more of the primary constituent elements, including perennial pools and the necessary vegetation that provides cover. In addition, this area is within a canyon, and it is inaccessible to cattle due to the geological nature of the canyon, which acts as a barrier. Land ownership is BLM.

f. Larry Creek—Portions of the creek from an unnamed tributary upstream 0.7 km (0.4 mi) to the confluence of two adjoining unnamed tributaries. In 1995, BLM introduced Gila chub from Silver Creek into Larry Creek, and the population appears to be thriving (Service files). Larry Creek contains one or more of the primary constituent elements, including perennial pools and the necessary vegetation that provides cover (Service files). In addition, this area is within a canyon, and it is inaccessible to cattle due to the geological nature of the canyon which acts as a barrier. The Service visually surveyed Larry Creek in 2003 and found Gila chub to be abundant. Land ownership is BLM.

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 use the provision outlined in section 4(b)(2) of the Act to evaluate those specific areas that contain the features 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 evaluation, we have determined that the benefits of excluding certain lands from the designation of critical habitat for the Gila chub outweigh the benefits of their inclusion, and have subsequently excluded those lands from this designation pursuant to section 4(b)(2) of the Act as discussed below.

Areas excluded pursuant to section 4(b)(2) may include, but are not limited to, Tribal conservation plans/programs that cover the species and partnerships, conservation plans/easements, or other type of formalized relationship/agreement on private lands. The relationship of critical habitat to these types of areas is discussed in detail in the following paragraphs.

After consideration under section 4(b)(2), the following areas of habitat have been excluded from critical habitat for the Gila chub: Bonita Creek and Blue River within the tribal lands of the San Carlos Apache Nation; Bonita Creek on BLM and private lands of the City of Safford; and portions of proposed areas 5(a) and 6(c) to address economic impacts. A detailed analysis of our exclusion of these lands under section 4(b)(2) of the Act is provided in the paragraphs that follow.

General Principles of Section 7 Consultations Used in the 4(b)(2) Balancing Process

The most direct, and potentially largest, regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation pursuant to section 7 of the Act to ensure that they are not likely to destroy or adversely modify critical habitat. There are two limitations to this regulatory effect. First, it only applies where there is a Federal nexus—if there is no Federal nexus, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, it only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure those areas that contain the physical and biological features essential to the conservation of the species or unoccupied areas that are essential to the conservation of the species are not eroded. Critical habitat designation alone, however, does not require specific steps toward recovery.

Once consultation under section 7 of the Act is triggered, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the listed species or its critical habitat. However, if the Service determines through informal consultation that adverse impacts are likely to occur, then formal consultation would be initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat, with separate analyses being made under both the jeopardy and the adverse modification standards. For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not contain any mandatory reasonable and prudent measures or terms and conditions. Mandatory reasonable and prudent alternatives to the proposed Federal action would only be issued when the biological opinion results in a jeopardy or adverse modification conclusion.

We also note that for 30 years prior to the Ninth Circuit Court's decision in *Gifford Pinchot*, the Service equated the jeopardy standard with the standard for destruction or adverse modification of critical habitat. The Court ruled that the Service could no longer equate the two standards and that adverse modification evaluations require consideration of impacts on the recovery of species. Thus, under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species. However, we believe the conservation achieved through implementing management plans is typically greater than would be achieved through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project, and they are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Thus, any management plan which considers enhancement or recovery as the management standard will always provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat in that it provides the framework for the consultation process.

Educational Benefits of Critical Habitat

A benefit of including lands in critical habitat is that the designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the Gila chub. In general the educational benefit of a critical habitat designation always exists, although in some cases it may be redundant with other educational effects. For example, habitat conservation plans have significant public input and may largely duplicate the educational benefit of a critical habitat designation. This benefit is closely related to a second, more

indirect benefit: That designation of critical habitat would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

However, we believe that there would be little additional informational benefit gained from the designation of critical habitat for the exclusions we are making in this rule because these areas were included in the proposed rule as having essential Gila chub habitat. Consequently, we believe that the informational benefits are already provided even though these areas are not designated as critical habitat. Additionally, the purpose normally served by the designation of informing State agencies and local governments about areas which would benefit from protection and enhancement of habitat for the Gila chub is already well established among State and local governments, and Federal agencies in those areas that we are excluding from critical habitat in this rule on the basis of other existing habitat management protections.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat.

San Carlos Apache Tribe

Relationship of Critical Habitat to American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act

In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Based on this philosophy, we believe that, in many cases, designation of tribal lands as critical habitat provides very little additional benefit to threatened and endangered species. Conversely, such designation is often viewed by tribes as an unwanted intrusion into tribal self governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend.

The San Carlos Apache Tribe has two streams within its tribal lands, the Blue River and a portion of Bonita Creek, that are known to be currently occupied by Gila chub and its tribal lands contain features that are essential to the conservation of the Gila chub. The Tribe has completed and is implementing a Fisheries Management Plan (FMP) that includes specific management actions for the Gila chub. In making our determination with regard to tribal lands, we considered several factors, including our relationship with San Carlos Apache Tribe, and the degree to which the Tribe's FMP provides specific management for the Gila chub. Tribal governments protect and manage their resources in the manner that is most beneficial to them. The San Carlos Apache Tribe exercises legislative, administrative, and judicial control over activities within the boundaries of its lands. Additionally, the Tribe has a natural resource programs and staff and have enacted the FMP. In addition, as trustee for land held in trust by the United States for Indian Tribes, the Bureau of Indian Affairs (BIA) provides technical assistance to the San Carlos Apache Tribe on management planning and oversees a variety of programs on their lands. Gila chub conservation activities have been ongoing on San Carlos Apache tribal lands, and, prior to the completion of their FMP, their natural resource management, while not specific to the Gila chub, was consistent with management of habitat for this species. The development and implementation of the efforts formalized in the San Carlos Apache Tribes FMP will continue with or without critical habitat designation.

The San Carlos Apache Tribe highly values its wildlife and natural resources, and is charged to preserve and protect these resources under the Tribal Constitution. Consequently, the Tribe has long worked to manage the habitat of wildlife on its tribal lands, including the habitat of endangered and threatened species. We understand that it is the Tribe's position that a designation of critical habitat on its lands improperly infringes upon its tribal sovereignty and the right to self-government.

The San Carlos Apache Tribes FMP provides assurances and a conservation benefit to the Gila chub. Implementation of the FMP will result in protecting all known Gila chub habitat on San Carlos Tribal Land and assures no net habitat loss or permanent modification will occur in the future. The purpose of the FMP includes the long-term conservation of native fishes, including Gila chub, on tribal lands. The FMP outlines actions to conserve, enhance, and restore Gila chub habitat, including efforts to eliminate nonnative fishes from Gila chub habitat. All habitat restoration activities (whether it is to rehabilitate or restore native plants) will be conducted under reasonable coordination with the Service. All reasonable measures will be taken to ensure that recreational activities do not result in a net habitat loss or permanent modification of the habitat. All reasonable measures will be taken to conduct livestock grazing activities in a manner that will ensure the conservation of Gila chub habitat. Within funding limitations and under confidentiality guidelines established by the Tribe, the Tribe will cooperate with the Service to monitor and survey Gila chub habitat, conduct research, perform habitat restoration, remove nonnative aquatic species, or conduct other beneficial Gila chub management activities.

As a result of the assurances, protections, and conservation benefit provided for the Gila chub and its habitat on San Carlos Apache Tribal lands described above, we are excluding the Blue River and portions of Bonita Creek occurring on tribal lands from the Middle Gila River Area.

(1) Benefits of Inclusion

Including lands of the San Carlos Apache Tribe in critical habitat would provide some additional benefit from section 7 consultation, because we could consult via the Bureau of Indian Affairs (BIA) on actions that could adversely affect critical habitat. Although we have not formally conferenced with BIA on any actions affecting Gila chub, we have conducted six formal conferences with BLM and FS that have involved proposed critical habitat. Activities covered in these conferences included livestock grazing, recreation, fish stocking, fire management, and bank stabilization, and conservation measures that benefited Gila chub critical habitat included monitoring, fence repair (to exclude cattle from overusing and thereby damaging Gila chub habitat), and education programs to inform the public of the need to avoid actions that damage habitat. However, we note that because the Gila chub will still be listed under this final rule and will be found on San Carlos Apache tribal lands, section 7 consultation under the jeopardy standard will still be required if Tribal or BIA activities would affect Gila chub, regardless of our excluding

these lands from the critical habitat designation. As a result, we expect that inclusion of San Carlos Apache tribal lands would provide only that additional habitat protection accorded by critical habitat as discussed by the Ninth Circuit Court of Appeals in the Gifford Pinchot ruling discussed above.

Nevertheless, few additional benefits would be derived from including these Tribal Lands in a Gila chub critical habitat designation beyond what will be achieved through the implementation of the FMP. As noted above, the primary regulatory benefit of any designated critical habitat is that federally funded or authorized activities in such habitat require consultation pursuant to section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid destruction or adverse modification of critical habitat. The San Carlos Apache Tribe has already agreed under the terms of their FMP to protect Gila chub habitat (PCEs), to ensure no net loss, to coordinate with the Service in order to prevent any habitat destruction, and to conduct activities consistent with the conservation of the Gila chub and its PCEs.

As discussed above, we expect that little additional educational benefit would be derived from designating lands (Blue River and Bonita Creek) of the San Carlos Apache as critical habitat. The additional educational benefits that might arise from critical habitat designation are largely accomplished through the multiple notice and comments which accompanied the development of this critical habitat designation, as evidenced by the San Carlos Apache Tribe currently working with the Service to address habitat and conservation needs for the Gila chub. Additionally, we anticipate that the San Carlos Apache Tribe will continue to actively participate in working groups, and provide for the timely exchange of management information. The educational benefits important for the long-term survival and conservation of the Gila chub are being realized without designating this area as critical habitat. Educational benefits will continue on these lands if they are excluded from the designation, because the FMP already recognizes the importance of those habitat areas to the Gila chub.

Another possible benefit is the additional funding that may be generated for habitat restoration or improvement by having an area designated as critical habitat. In some instances, having an area designated as critical habitat may improve the ranking a project receives during evaluation for funding. The San Carlos Apache Tribe often requires additional sources of funding in order to conduct wildlife-related activities. Therefore, having an area designated as critical habitat could improve the chances of Tribe receiving funding for Gila chub-related projects. Additionally, occupancy by Gila chub also provides benefits to be considered in evaluating funding proposals. Because there are areas of occupied habitat on San Carlos Apache lands, the listing of the Gila chub may help secure funding for management of these areas.

For these reasons, then, we believe that designation of critical habitat would provide some additional benefits.

(2) Benefits of Exclusion

The benefits of excluding the San Carlos Apache Tribal lands from critical habitat include: (1) The advancement of our Federal Indian Trust obligations and our deference to Tribes to develop and implement tribal conservation and natural resource management plans for their lands and resources, which includes the Gila chub and other Federal trust species; (2) the maintenance of effective working relationships to promote the conservation of the Gila chub and their habitat; (3) the allowance for continued meaningful collaboration and cooperation on Gila chub management and other resources of interest to the Federal government; (4) the provision of conservation benefits to riparian ecosystems and a host of species, including the Gila chub and its habitat, that might not otherwise occur; and (5) the reduction or elimination of administrative and/or project modification costs as analyzed in the economic analysis.

During the development of the Gila chub critical habitat proposal (and coordination for other critical habitat proposals), and other efforts such as conservation of native fish species in general, we have met and communicated with the San Carlos Apache Tribe to discuss how they might be affected by the regulations associated with Gila chub conservation and the designation of critical habitat. As such, we established relationships with the San Carlos Apache Tribe specific to Gila chub conservation. As part of our relationship, we provided technical assistance to the San Carlos Apache Tribe to develop measures to conserve the Gila chub and its habitat on their lands. These measures are contained within the FMP that we have in our supporting record for this decision (see discussion above). This proactive action was conducted in accordance with Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2). We believe that the San Carlos Apache Tribe should be the governmental entity to manage and promote the conservation of the Gila chub on their lands. During our communication with the San Carlos Apache Tribe, we recognized and endorsed their fundamental right to provide for tribal resource management activities, including those relating to riparian ecosystems.

The designation of critical habitat on the San Carlos Apache Tribal lands would be expected to adversely impact our working relationship with them. In fact, during our discussions with the San Carlos Apache Tribe and from comments received, we were informed that critical habitat would be viewed as an intrusion on their sovereign abilities to manage natural resources in accordance with their own policies, customs, and laws. To this end, we found that the San Carlos Apache Tribe would prefer to work with us on a government-to-government basis. For these reasons, we believe that our working relationship with the San Carlos Apache Tribe would be better maintained if they are excluded from the designation of critical for the Gila chub. We view this as a substantial benefit.

We indicated in the proposed rule (August 9, 2002; 67 FR 51948) that in our final decision concerning designation of critical habitat on the San Carlos Apache Tribal lands, we would consider our relationship with the San Carlos Apache Tribe and whether they developed a Gila chub FMP. We identified that the San Carlos Apache Tribe had a draft FMP. We also discussed our continued cooperation with the San Carlos Apache Tribe during the comment period on the development of the FMP. During the comment period, we received input from the San Carlos Apache Tribe and BIA offices expressing the view that designating critical habitat for the Gila chub on Tribal land would adversely affect the Service's working relationship with the San Carlos Apache Tribe. They noted the beneficial cooperative working relationships between the Service and the San Carlos Apache Tribe that have assisted in the conservation and recovery of listed species and other natural resources. They indicated that critical habitat

designation on the San Carlos Apache Tribe would amount to additional Federal regulation of their sovereign lands, and would be viewed as an unwarranted and unwanted intrusion into Tribal natural resource programs. We conclude that our working relationships with the San Carlos Apache Tribe on a government-to-government basis has been extremely beneficial in implementing natural resource programs of mutual interest (including the protection of Gila chubs and their PCEs), and that these productive relationships would be compromised by critical habitat designation of the San Carlos Apache Tribal lands.

In addition to management/conservation actions described for the conservation of the Gila chub, we anticipate future management/conservation plans to include conservation efforts for other listed species and their habitat. We believe that many Tribes and Pueblos are willing to work cooperatively with us to benefit other listed species, but only if they view the relationship as mutually beneficial. Consequently, the development of future voluntary management actions for other listed species will likely be contingent upon whether the San Carlos Apache Tribal lands are designated as critical habitat for the Gila chub. Thus, the benefit of excluding these lands would be future conservation efforts that would benefit other listed species.

The economic analysis conducted for this proposal estimates that the costs associated with designating this area of the proposed critical habitat would be $37,000 to $321,200 annually (discounted at 7 percent). These costs would be incurred as a result of changes in grazing management, fire management, recreation, timber harvest, and costs associated with compliance with Act. Excluding this reach could allow some or all of these costs to be avoided. However, considering that this area is currently occupied by the species, consultation for activities that might adversely impact the species, including possible habitat modification, would be required even without the critical habitat designation; thus the possible economic benefits might not materialize.

Another benefit of excluding the San Carlos Apache Tribal lands from the critical habitat designation includes relieving additional regulatory burden and costs associated with the preparation of portions of section 7 documents related to critical habitat. While the cost of adding these additional sections to assessments and consultations is relatively minor, there could be delays which can generate real costs to some project proponents. However, because in this case critical habitat was only proposed for occupied areas already subject to section 7 consultation and a jeopardy analysis, it is anticipated this reduction would be minimal.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We find that the benefits of designating critical habitat for the Gila chub on San Carlos Apache Tribe lands are small in comparison to the benefits of exclusion. Exclusion would enhance the partnership efforts focused on recovery of the Gila chub within this reach and encourage other stakeholders to become a part of this cooperative effort. Excluding this area also would reduce some of the administrative costs during consultation pursuant to section 7 of the Act.

(4) Exclusion Will Not Result in Extinction of the Species

The San Carlos Apache Tribe has committed to greater conservation measures on these areas than would be available through the designation of critical habitat. Because areas of the San Carlos Apache tribal lands are occupied by the Gila chub which is protected from take under section 9 of the Act, any actions that might kill Gila chub including habitat modification that would cause death of the Gila chub, must either undergo a consultation with the Service under the requirements of section 7 of the Act or receive a permit from us under section 10 of the Act. Additionally, we have concluded that excluding these lands from critical habitat will not result in the extinction of the Gila chub because the FMP specifically addresses conservation of the Gila chub. The purpose of the FMP includes the long-term conservation of native fishes, including Gila chub, on tribal lands. The FMP outlines actions to conserve, enhance, and restore Gila chub habitat, including efforts to eliminate nonnative fishes from Gila chub habitat. Such efforts provide greater conservation benefit than would result for designation as critical habitat. This is because section 7 consultations for critical habitat only consider listed species in the project area evaluated and Federal agencies are only committed to prevent adverse modification to critical habitat caused by the particular project and are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Such efforts provide greater conservation benefit than would result for designation as critical habitat. As a result, there is no reason to believe that this exclusion would result in extinction of the species.

Accordingly, we have determined that the lands of the San Carlos Apache Tribe should be excluded pursuant to 4(b)(2) of the Act because the benefits of excluding these lands from critical habitat outweigh the benefits of their inclusion, and the exclusion of these lands from the designation will not result in the extinction of the species.

Gila Box Riparian National Conservation Area and the Bonita Creek Partnership

As discussed in the ''Summary of Changes from the Proposed Rule'' section above, we have determined that proposed critical habitat in Bonita Creek, Graham County, Arizona, will not be designated as critical habitat due to our partnership with the BLM, Reclamation, and City of Safford. The City of Safford operates an infiltration gallery within Bonita Creek. The infiltration gallery uses submerged intake pipes to pull water from Bonita Creek which is then transported across BLM land via pipeline to the City of Safford where it is used for drinking water. The city is developing a Memorandum of Understanding (MOU) with BLM to jointly manage the water delivery system, and other common elements of the area. BLM manages lands both upstream and downstream of the private parcel on which the city's gallery occurs as part of the Gila Box Riparian National Conservation Area (RNCA). We have reached this determination because we believe the benefits of excluding this segment from the final critical habitat designation outweigh the benefits of designating the creek as critical habitat.

The portion of Bonita Creek located within the RNCA provides excellent habitat for Gila chub. Healthy Gila chub populations have long been documented in Bonita Creek upstream of the city's infiltration gallery. Although they are present downstream, they are at much lower numbers, presumably due to the presence of a number of nonnative fish species. The city's infiltration gallery, by creating a dry reach of Bonita Creek, for many years has apparently acted as a barrier to the upstream movement of nonnative fishes, protecting areas upstream of the gallery occupied by native fish species, including Gila chub. Reclamation is also planning to build a fish barrier on Bonita Creek below the City's infiltration gallery to further this protection.

BLM has a commitment to work toward conserving federally-listed

species in Bonita Creek that has existed for over a decade. As the primary land manager, they have conducted intensive monitoring for Gila chub, and funded research on the life history of Gila chub. They have also provided a law enforcement ranger to patrol the Gila Box RNCA, which helps reduce the threat of vandalism or introduction of nonnative fishes into the Gila chub habitat. BLM has also developed the Gila Box RNCA Management Plan, which provides management direction for all activities that occur in the RNCA. This plan specifically addresses wildlife conservation within Bonita Creek, including native fishes such as Gila chub. Guidelines for the construction of new roads, closures of old roads, development of recreational facilities, management of recreation, management of grazing, management of riparian areas including riparian vegetation, watershed management, and water quality management are all covered in the RNCA management plan, and this management is focused on improving habitats within the RNCA, including those of the Gila chub.

BLM's Gila Box RNCA management plan also details how BLM will work cooperatively with the City of Safford to provide for their management needs, while reducing potential adverse effects to the resources of the RNCA. The associated management action is to work with the City to support the management goals of the RNCA along with the management needs of the City and the effective operation of the public water system. The City of Safford is developing an MOU with BLM to formalize this arrangement, and this MOU will specifically address the conservation of native fishes, including the Gila chub. Additionally, we are working with Reclamation to build a concrete barrier on Bonita Creek downstream of the City's infiltration gallery to further protect the creek from the invasion of nonnative fishes, and to reintroduce several federally-listed native fish species, both as conservation measures for Reclamation's operation of the Central Arizona Project canal (U.S. Fish and Wildlife Service 2001b). Collectively, our partnership has contributed to immediate and long-term benefits to the conservation and recovery of protected species.

(1) Benefits of Inclusion

As stated in the environmental assessment, the primary conservation value of the proposed critical habitat segments is to sustain existing populations. As discussed in the ''General Principles of Section 7 Consultations Used in the 4(b)(2) Balancing Process'' section above, the threshold for reaching destruction or adverse modification would likely require a reduction in the capability of the habitat to sustain existing populations. Given that this area of Bonita Creek is being managed to benefit wildlife, including the Gila chub, it is highly unlikely that projects would be considered for this area that would result in depreciable diminishment or a long-term reduction of the capability of the habitat to sustain existing populations. To the contrary, activities occurring on these lands have provided benefits, as described above, to the Gila chub and are expected to continue to do so. To date, the Service has conducted nine formal consultations for BLM on management of lands within the RNCA, including three conference opinions since the Gila chub was proposed for listing in 2003 (U.S. Fish and Wildlife Service 2004a). These consultations/conferences involved management actions administered by BLM, all of which are covered in the RNCA management plan which provides long-term conservation benefits to the species and its PCEs and none resulted in adverse modification to proposed critical habitat.

As discussed above, we expect that little additional educational benefits would be derived from including Bonita Creek in the critical habitat designation. The additional educational benefits that might arise from critical habitat designation are largely accomplished through the multiple notice and comments that accompanied the development of this critical habitat designation. Because BLM is the primary land manager, they have conducted surveys and habitat monitoring for Gila chub at Bonita Creek. Therefore, the potential designation of critical habitat at Bonita Creek would not provide this educational benefit because BLM, and the City of Safford via the MOU, already know the fish are present and are studying its habitat. BLM is also already aware that Bonita Creek has a robust population of Gila chub that are important to conservation goals of the species. Likewise the City of Safford is aware of this through the MOU, as is Reclamation, through its conservation measure to build a fish barrier to protect the Bonita Creek fishery.

(2) Benefits of Exclusion

The benefits of excluding Bonita Creek from critical habitat designation include recognizing the value of partnerships with BLM and the City of Safford, encouraging actions that benefit multiple species, encouraging local participation in conservation of valuable habitat for multiple species, facilitating the cooperative activities provided by the Service, and reducing or eliminating administrative and/or project modification costs as analyzed in the economic analysis. Additionally, our existing partnership and the integration of Federal land management will generate a consistent management approach at Bonita Creek.

The partnership and cohesive management at Bonita Creek will maintain habitat (PCEs) for Gila chub for the long-term. This partnership has already generated the development, finalization, and implementation of Gila Box RNCA management plan that provides long-term conservation benefits to the species and its PCEs. When finalized, the MOU will further this conservation benefit. In addition to maintaining habitat for the long-term at Bonita Creek, this partnership will include the development of species status and distribution information for the Gila chub needed to guide conservation efforts and assist in species conservation outside the area, and the creation of innovative solutions to conserve species that can be applied wherever similar needs exist, irrespective of land ownership. The partnership with BLM, Reclamation, and the City of Safford also facilitates other cooperative activities with other similarly situated industry, communities, and landowners. Continued cooperative relations with the City of Safford are expected to influence other future partners and lead to greater conservation than would be achieved through multiple section 7 consultations.

Non-Federal landowners or water operators such as the City of Safford are motivated to work with Reclamation, BLM, and the Service collaboratively to develop voluntary conservation efforts because of the economic benefits of such a partnership. Bonita Creek is valuable to the city both as a clean water supply, and as a tourist destination. Collaboration of this type often provides greater conservation benefits than could be achieved through strictly regulatory approaches, such as a critical habitat designation. The conservation benefits resulting from this collaborative approach are built upon a foundation of mutual trust and understanding. It takes considerable time and effort to establish this foundation, which is one reason it often takes several years to develop such partnerships. Excluding this area from critical habitat would help promote and honor that trust by providing certainty for partners that, once appropriate conservation measures have been agreed

to, additional consultation will not be necessary.

In discussions with the Service, the BLM and the City of Safford have indicated they view critical habitat designation as unwarranted, and that designation could undermine the conservation benefits that would be provided by their MOU. There is a concern by BLM and the City of Safford that designation of critical habitat at Bonita Creek has the potential to threaten the delivery of water to the City of Safford and other towns served by the city such as Thatcher and Soloman. Should this ever come to pass, the results could be significant; however, we do not believe that scenario is reasonably foreseeable. The Service's commitment will encourage continued partnerships with these entities that could result in additional conservation plans or additional lands protected. Exclusion of areas where our partnership has been established following years of collaborative efforts will result in habitat protection for the Gila chub, preservation of these partnerships, and in promoting more effective conservation actions in the future.

The economic analysis conducted for this proposal estimates that the costs associated with designating this segment of the proposed critical habitat would be about $0.25 to $1.02 million annually. Almost all of this cost is related to changes in water use and management required for conservation of the Gila chub. Excluding this reach could allow some or all of these costs to be avoided. However, considering that this area is currently occupied by the species, section 7 consultation for activities which might adversely impact the species, including possible habitat modification, would be required even without the critical habitat designation, and thus the possible economic benefits might not materialize.

Another benefit of excluding Bonita Creek from the critical habitat designation includes relieving additional regulatory burden and costs associated with the preparation of portions of section 7 consultation documents related to critical habitat. While the cost of adding these additional sections to assessments and consultations is relatively minor, there could be delays which can generate real costs to some project proponents. However, because critical habitat in this case is only proposed for occupied areas already subject to section 7 consultation and a jeopardy analysis, it is anticipated this reduction would be minimal.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We find that the benefits of designating critical habitat for the Gila chub at Bonita Creek are small in comparison to the benefits of exclusion. In making this finding, we have weighed the benefits of including Bonita Creek as critical habitat to the benefits of these lands without critical habitat, with management based on our existing partnership and management by the BLM and City of Safford. Excluding Bonita Creek would reduce some additional administrative effort and cost during the consultation process pursuant to section 7 of the Act. Excluding Bonita Creek would continue to help foster development of future partnerships and strengthen our relationship with stakeholders. To date, BLM management has fostered the development, presence, and protection of Gila chub habitat. Because Bonita Creek is within the RCNA, we believe there is virtually no risk of development or extensive land-use by the BLM that would be expected to result in adverse modification. Excluding Bonita Creek promotes our partnership with the City of Safford by eliminating the concern of the City of Safford regarding the possible risk of loss of water delivery capabilities.

We have, therefore, concluded that the current BLM management of this area, along with the partnership with BLM, the City of Safford, and Reclamation, and the conservation commitment to Gila chub habitat of these entities, outweigh those benefits that would result from the area being included in the designation. We have therefore excluded these lands from the final critical habitat designation pursuant to section 4(b)(2) of the Act.

(4) Exclusion Will Not Result in Extinction of the Species

The City of Safford, Reclamation, and BLM are committing to greater conservation measures on these areas than would be available through the designation of critical habitat. As described above, the BLM has developed the Gila Box RNCA Management Plan, which provides management direction for all activities that occur in the RNCA. This plan specifically addresses wildlife conservation within Bonita Creek, including native fishes such as Gila chub. Additionally, because this segment is occupied by the Gila chub, which is protected from take under section 9 of the Act, any actions that might kill the Gila chub, including habitat modification that would cause the death of Gila chub must either undergo a consultation with the Service under the requirements of section 7 of the Act or receive a permit from us under section 10 of the Act. This exclusion leaves these protections unchanged from those which would exist if the excluded areas were designated as critical habitat. Such efforts provide greater conservation benefit than would result for designation as critical habitat. This is because section 7 consultations for critical habitat only consider listed species in the project area evaluated and Federal agencies are only committed to prevent adverse modification to critical habitat caused by the particular project and are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Critical habitat is also being designated for the Gila chub in other areas that will be accorded the protection from adverse modification by Federal actions using the conservation standard based on the Ninth Circuit decision in *Gifford Pinchot*, and the Gila chub occurs on other lands not being designated as critical habitat that are protected and managed explicitly to protect natural habitat values. These considerations, along with the continued persistence of the Gila chub in Bonita Creek due in part to the partnership BLM, the City of Safford, and Reclamation, lead us to conclude that there is no reason to believe that this exclusion would result in extinction of the species.

Private Lands Proposed for Area 5(a)—Lower Cienega Creek and Area 6(c)—Spring Creek

As discussed in the ''Summary of Changes from the Proposed Rule'' section above, we have determined that proposed critical habitat on 1.9 mi of the lower segment of Cienega Creek and on 1.9 mi of Spring Creek will not be designated as critical habitat due to the potential economic impact of designating these segments. The economic analysis indicates possible cost impacts of nearly $36 million from these two segments. This is both a significant impact and a highly disproportionate one. The small amount of proposed critical habitat we are excluding in these two areas bore more than half of the projected cost impacts from the entire designation (summarized in Exhibit ES–2 of the economic analysis).

The economic analysis indicates a cost of nearly $40 million for these two areas overall, but $4 million of this is attributed to a segment of BLM lands on Cienega Creek that we are not

excluding. The Service has conducted a consultation with BLM over the water use addressed in the economic analysis, although that is not reflected in the analysis, and we accordingly believe that cost is unlikely to occur.

We have reached this determination because we believe the benefits of excluding these segments from the final critical habitat designation outweigh the benefits of designating them as critical habitat.

Section 4(b)(2) allows the Secretary to exclude areas from critical habitat for economic reasons if she determines that the benefits of such exclusion exceed the benefits of designating the area as critical habitat, unless the exclusion will result in the extinction of the species concerned. This is a discretionary authority Congress has provided to the Secretary with respect to critical habitat. Although economic and other impacts may not be considered when listing a species, Congress has expressly required their consideration when designating critical habitat. Exclusions under this section for non-economic reasons are addressed above.

In general, we have considered in making these two exclusions that all of the costs predicted in the economic analysis may not be avoided by excluding the area, due to the fact that the areas in question are currently occupied by the species and there will be requirements for consultation under section 7 of the Act, or for permits under section 10 for any take of the species, and other protections for the species exist elsewhere in the Act and under State and local laws and regulations. As explained in the analysis, due to the uncertainty associated with future consultations, cost estimates are given as a range rather than a single number. We are also aware, and have considered in making the exclusions, that the low end estimate for the Spring Creek exclusion is a minimal amount, and that there is no certainty that either the high or low cost estimates for the Cienega Creek exclusion will occur absent the exclusion. However, there is a real risk that these costs might result.

(1) Benefits of Inclusion

As stated in the environmental assessment and addressed above, the primary conservation value of the proposed critical habitat segments is to sustain existing populations. The areas excluded are currently occupied by the species. If these areas were designated as critical habitat, any actions with a Federal nexus which might adversely modify the critical habitat would require a consultation with us. However, inasmuch as this area is currently occupied by the species, consultation for activities which might adversely impact the species, including possibly habitat modification (see definition of ''harm'' at 50 CFR 17.3) would be required even without the critical habitat designation. We recognize that consultation for critical habitat would likely provide some additional benefits to the species under the provision of the Gifford Pinchot decision; however, we believe that such benefits are minimal as discussed above.

As discussed above, we expect that little additional educational benefits would be derived from including these two areas as critical habitat. The additional educational benefits that might arise from critical habitat designation are largely accomplished through the multiple notice and comments which accompanied the development of this critical habitat designation. We have been in contact with the land owners in the course of developing the economic analysis, and they are already aware that maintaining habitat quality on their lands for the Gila chub is important to conservation of the species.

Some benefits could be derived if water currently available to private entities at the Cienega Creek segment were required to be made available to Gila chub. Additionally, designation of critical habitat in the Spring Creek segment might result in consultations with Federal agencies or as part of intra-Service consultations for HCPs that may lead to higher quality habitat in that segment of the creek; however, we believe any possible benefits would be minimal as derived from critical habitat because the chub is present in the creek and consultations are already likely to occur. Designation of critical habitat in the Spring Creek segment might result in consultations that lead to higher quality habitat in that segment of the creek. However, preliminary discussions have begun from which we believe there may be a formal consultation via a Federal nexus involving permits required by the Clean Water Act. Because Gila chub are present in Spring Creek, this potential consultation would have to take place regardless of the presence of critical habitat. We believe that although some additional benefit may occur from critical habitat, any additional benefit would be minimal.

In summary, we believe that designating these proposed segments as critical habitat would provide little additional Federal regulatory benefits for the species. Under the Gifford Pinchot decision, critical habitat designations may provide greater benefits to recovery of a species than was previously believed. Because the proposed critical habitat is occupied by the species, there must be consultation with the Service over any action which might impact it. Some improvements in habitat quality or water quantity might result from a designation, but we believe that they would be minimal, as discussed above. The additional educational benefits which might arise from critical habitat designation are largely accomplished through the multiple notice and comments which accompanied the development of this regulation, and contact with the affected parties during development of the economic analysis.

(2) Benefits of Exclusion

The benefits of excluding these segments from critical habitat designation are avoidance in up to $36 million in possible economic impacts, as set out in the economic analysis.

We also believe that excluding these lands, and thus helping landowners and water users avoid the additional costs that would result from the designation, will contribute to a more positive climate for Habitat Conservation Plans and other active conservation measures. These generally provide greater conservation benefits than result from designation of critical habitat—even in the post-Gifford Pinchot environment—which requires only that the there be no adverse modification resulting from Federally-related actions.

Generally, positive conservation efforts by landowners contribute more towards recovery of species than the mere avoidance of adverse impacts required under a critical habitat designation.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We find that the benefits of designating critical habitat for the Gila chub on these two segments of Cienega Creek and Spring Creek are small in comparison to the benefits of exclusion. As indicated above, we believe that designation of these stream segments will provide only minimal benefit to the species. In making this finding, we have weighed the benefits of including these segments as critical habitat against the possible costs imposed on private parties as a result of the designation.

We have therefore excluded these lands from the final critical habitat designation pursuant to section 4(b)(2) of the Act.

(4) Exclusion Will Not Result in Extinction of the Species

Because these areas are occupied by the Gila chub, which is protected from take under section 9 of the Act, any actions that might adversely affect or result in take of the Gila chub, regardless of whether the Federal nexus needed to trigger consultation for critical habitat is present, must undergo a consultation with the Service under the requirements of section 7 of the Act or receive a permit from us under section 10 of the Act. This exclusion leaves these protections unchanged from those which would exist if the excluded areas were designated as critical habitat. Additionally, we have concluded that excluding these lands from critical habitat will not result in the extinction of the Gila chub because these exclusions are only a small percentage of the overall critical habitat designation. The majority of the area proposed as critical habitat for this species is being designated as critical habitat.

Effect of Critical Habitat Designation

Section 7 Consultation

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 learns whether the Service regards the proposed action as consistent with section 7(a)(2) or if the Service can suggest modifications that would avoid jeopardy or adverse modification.

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.

Federal activities that may affect the Gila chub 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., Federal Highway Administration (FHA), Federal Aviation Administration, or Federal Emergency Management Agency (FEMA)), 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 consultations.

Since we proposed critical habitat for the Gila chub on August 9, 2002 (67 FR 51948), we have issued a number of formal conference reports as requested by several Federal agencies. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated as final. We may adopt these formal conference reports as the biological opinion with this final critical habitat designation, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10 (d)).

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 adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the Gila chub. Each of the specific areas designated in this rule as critical habitat for the Gila chub have been determined to contain sufficient PCEs to provide for one or more of the life history functions for the Gila chub. In some cases, the PCEs exist as a result of ongoing Federal actions. As a result, ongoing Federal actions at the time of designation will be included in the baseline in any consultation pursuant to section 7 of the Act conducted subsequent to this designation. Federal activities that, when carried out, may adversely affect critical habitat for the Gila chub include, but are not limited to:

(1) Any activity that would significantly alter the minimum flow or the natural flow regime of any of the designated stream segments. Such activities may include, but are not limited to, groundwater pumping, impoundment, water diversion, and hydropower generation.

(2) Any activity that might significantly alter watershed characteristics of any of the designated segments. Such activities may include, but are not limited to, vegetation manipulation (e.g., prescribed burns, timber harvest), road construction and maintenance, naturally ignited fire (e.g., lightning), livestock grazing, and mining.

(3) Any activity that would significantly alter the channel morphology of any of the designated stream segments. Such activities may include, but are not limited to, channelization; impoundment; road and bridge construction; removal of substrate source; destruction and alteration of riparian vegetation; reduction of available floodplain; removal of gravel or floodplain terrace materials; and sedimentation from mining, livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed and floodplain disturbance.

(4) Any activity that would significantly alter the water chemistry in any of the designated stream segments. Such activities may include, but are not limited to, release of chemical or biological pollutants into the surface waters or connected groundwater at a point source or by dispersed release (non-point).

(5) Any activity that would introduce, spread, or augment nonnative aquatic species into any of the designated stream segments. Such activities may include, but are not limited to, stocking for sport, aesthetics, biological control, or other purposes; use of live bait fish, aquaculture, or dumping of aquarium fish or other species; construction and

operation of canals; and interbasin water transfers (i.e. CAP aqueduct).

If you have any questions regarding whether specific activities will likely constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Arizona Ecological Services Office (see **ADDRESSES** section above). Requests for copies of the regulations on listed wildlife and inquiries about permits may be addressed to the U.S. Fish and Wildlife Service, Division of Endangered Species, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone (505) 248–6920; facsimile (505) 248–6788).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in public awareness and conservation actions by Federal, State, and local agencies private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. 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 must enter into formal consultation with the Service.

The Gila chub occurs primarily on Federal lands managed by Coronado, Apache-Sitgreaves, Tonto, Prescott, Coconino, and Gila National Forests, and by the BLM. Examples of Federal actions that may affect the Gila chub include, but are not limited to, dredge-and-fill activities, livestock grazing programs, construction and maintenance of stock tanks (pond), logging and other vegetation manipulation activities, flood protection and repair measures, channelization, water development, construction and management of recreation sites, road and bridge construction and maintenance, fish stocking, issuance of rights-of-way, prescribed fire, and discretionary actions authorizing mining. These and other Federal actions would require section 7 consultation if the action agency determines that the proposed action may affect listed species.

Also subject to section 7 consultation are development activities on private and State lands when such activity is conducted by, funded by, or permitted by a Federal agency. Examples include permits issued under section 404 or 402 of the Clean Water Act from the Corps or the EPA respectively. Federal actions not affecting the species, as well as actions on private lands that are not federally-funded or permitted, would not require section 7 consultation.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances.

Regulations governing permits for endangered species are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Requests for copies of the regulations regarding listed wildlife and inquires about permits may be addressed to U.S. Fish and Wildlife Service Branch of Endangered Species, P.O. Box 1306, Albuquerque, NM 87103 (505) 248–6657 fax (505) 248–6922.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable those activities that would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness as to the effects of this listing on future and ongoing activities within the species' range. We believe, based on the best available information that the following actions will not result in a violation of section 9:

(1) Actions that may affect the Gila chub that are authorized, funded, or carried out by a Federal agency when the action is conducted in accordance with an incidental take statement issued by us pursuant to section 7 of the Act, or for which such action will not result in take;

(2) Actions that may result in take of Gila chub when the action is conducted in accordance with a permit under section 10 of the Act;

(3) Recreational activities such as hiking, off-road vehicle use, camping, and hunting in the vicinity of occupied Gila chub habitat that do not destroy or significantly degrade Gila chub habitat;

(4) Release, diversion, or withdrawal of water from or near Gila chub habitat in a manner that does not displace or result in desiccation or death of eggs, larvae, or adults, does not disrupt spawning activities, or does not favor introduction of nonnative predators; and does not alter vegetation.

Activities involving this species that we believe could be considered a violation of section 9 include, but are not limited to, the following:

(1) Unauthorized collection, capture, or handling of the species;

(2) Intentional introduction of nonnative predators, such as nonnative fish and crayfish, into occupied Gila chub habitat;

(3) Water diversion, groundwater pumping, water releases, or other water-management activities that result in displacement of eggs, larvae, or adults; disruption of spawning activities; introduction of nonnative predators; or significant alteration of vegetation within occupied Gila chub habitat;

(4) Discharge or dumping of hazardous materials, silt, or other pollutants into waters supporting Gila chub;

(5) Possession, sale, delivery, transport, or shipment of illegally taken Gila chub;

(6) Actions that take Gila chub that are not authorized by either a permit under section 10 of the Act or an incidental take statement under section 7 of the Act, or are not exempted from the section 9 take prohibitions; and

(7) Recreational activities such as off-road vehicle use in the vicinity of occupied Gila chub habitat that destroys or significantly degrades Gila chub habitat.

Not all the activities mentioned above will result in a violation of section 9 of the Act; only those activities that result

in ''take'' of Gila chub would be considered violations of section 9. We will review other activities not identified above on a case-by-case basis to determine whether they may be likely to result in violation of section 9 of the Act.

If you have questions regarding whether specific activities will likely violate section 9, contact the Arizona Ecological Services Field Office (see **ADDRESSES** section above).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific data available and to consider the economic impact, impact to national security, and other relevant impacts of designating a particular area as critical habitat. We based this designation on the best available scientific information. We utilized the economic analysis, and took into consideration comments and information submitted during the public hearing and comment periods to make this final listing and critical habitat determination. 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.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for the Gila chub. 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. 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.

A draft analysis of the economic effects of the proposed critical habitat designation was prepared and made available for public review (August 31, 2005; 70 FR 51732). The economic analysis considers the economic impacts of conservation measures taken prior to and subsequent to the final listing and designation of critical habitat for the Gila chub. Pre-designation impacts are typically defined as all management efforts that have occurred since the time of listing. The Gila chub has not been listed, but was proposed for listing on August 9, 2002 (67 FR 51948). Our draft economic analysis found that the total post-designation costs associated with the seven proposed critical habitat areas are forecast to range from $11.3 million to $28.1 million in constant dollars over 20 years, or $0.8 million to $1.9 million annually (Service 2005a). Estimated costs are primarily due to impacts on water management, livestock grazing, livestock grazing and timber management on San Carlos Apache Tribal lands, and fire management and other activities (species and habitat management, recreation, fire management, mining, and transportation activities).

Based upon these estimates, we conclude in the final analysis, which reviewed and incorporated public comments, that no significant economic impacts are expected from the designation of critical habitat for Gila chub. A copy of the economic analysis is included in our supporting record and may be obtained by contacting the Arizona Ecological Services Field Office (see **ADDRESSES** section) or online at *http://www.fws.gov/arizonaes/.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. However, based on our economic analysis, it is not anticipated that the designation of critical habitat for the Gila chub would result in an annual effect on the economy of $100 million or more or 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 final rule or accompanying economic analysis.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, then the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat, providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)) (SBREFA), 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. Based upon our draft economic analysis we certified in our August 31, 2005 (70 FR 51732), **Federal Register** notice that this designation would not result in a significant effect as defined under SBREFA.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations and small governmental jurisdictions, including school boards and city and

town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the designation of critical habitat for the Gila chub would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, water management and use, livestock grazing, San Carlos Apache Tribal activities, residential and related development, Gila chub-specific management activities, recreation activities, fire management activities, mining, and transportation). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation. Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

Our economic analysis of this designation evaluated the potential economic effects on small business entities and small governments resulting from conservation actions related to the listing of this species and proposed designation of its critical habitat. We evaluated small business entities in nine categories: Water management and use, livestock grazing activities, San Carlos Apache Tribal activities, residential and related development, Gila chub-specific management activities, recreation activities, fire management activities, mining, and transportation. Based on our analysis, impacts are anticipated to occur in livestock grazing. The following is a summary of the information contained in Appendix B of the economic analysis:

Livestock Grazing Activities

Ranching operations are anticipated to be impacted by conservation activities for the Gila chub. Approximately 16 ranching operations may be impacted annually. Annual costs to each of these 16 ranching operations may be between $1,400 and $11,700. Average revenues of a ranch in the region of the proposed critical habitat designation are $144,000. These potential losses represent between 1 and 8 percent of each ranch's estimated average revenues. Exhibit B–2 in the economic analysis presents the average revenues of ranches by county. Of the 118 beef cattle ranching and farming operations (NAICS 112111) in Arizona counties with proposed Gila chub critical habitat, 92 percent are considered small businesses. Therefore, 15 small ranching operations (92 percent of 16 operations) may experience a reduction in revenues of between 1 and 8 percent annually. The extent to which these impacts are significant to any of these ranching operations will depend on the individual financial conditions of the ranch.

Based on these data, we have determined that this designation would not affect a substantial number of small businesses involved in or affected by livestock grazing. As such, we are certifying that this designation of critical habitat would not result in a significant economic impact on a substantial number of small entities. Please refer to Appendix B of our economic analysis for this designation for a more detailed discussion of potential economic impacts to small business entities. Since we have excluded Bonita Creek, Blue River, Cienega Creek, and Spring Creek from the final designation pursuant to section 4(b)(2) of the Act, as discussed above, we have determined that this designation would not affect a substantial number of small businesses involved in or affected by water management activities or timber harvest.

Executive Order 13211

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule is considered a significant regulatory action under E.O. 12866 due to its potentially raising novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Appendix B of the economic analysis provides a discussion and analysis of this determination. The Office of Management and Budget has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared without the regulatory action under consideration. The economic analysis finds that none of these criteria are relevant to this analysis; thus, energy-related impacts associated with Gila chub conservation activities within critical habitat are not expected.

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, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; 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. Non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) The economic analysis discusses potential impacts of critical habitat designation for the Gila chub on water management activities, livestock grazing, Tribes, residential and commercial development activities, recreation activities, fire management activities, mining, and transportation activities. The analysis estimates that annual costs of the rule could range from $20.6 million to $61.8 million in undiscounted dollars over 20 years ($1.5 million to $3.8 million annually). Impacts are largely anticipated to affect water operators and Federal and State agencies, with some effects on livestock grazing operations. Impacts on small governments are not anticipated, or they are anticipated to be passed through to consumers. For example, costs to water operations would be expected to be passed on to consumers in the form of price changes. Consequently, for the reasons discussed above, we do not believe that the designation of critical habitat for the Gila chub will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the Gila chub in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the Gila chub does not pose significant takings implications.

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 policy, the Service requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in Arizona and New Mexico. The impact of the designation on State and local governments and their activities was fully considered in the economic analysis. As discussed above, the designation of critical habitat for the Gila chub would have little incremental impact on State and local governments and their activities. In fact, the designation of critical habitat may have some benefit to the State and local resource agencies in that the areas with features that are 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.

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 that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act, as amended. This rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs that are essential for the conservation of the Gila chub.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain new or revised information collection for which Office of Management and Budget 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

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 Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld 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, such as that of the Gila chub, 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. We conducted a NEPA evaluation and notified the public of the draft document's availability on August 31, 2005 (70 FR 51732). We completed an environmental assessment and finding of no significant impact on the designation of critical habitat for the Gila chub; the final document is available and can be viewed online at *http://www/fws.gov/arizonaes/*.

Secretarial Order 3206: American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act

The purpose of Secretarial Order 3206 (Secretarial Order) is to ''clarif(y) the responsibilities of the component agencies, bureaus, and offices of the Department of the Interior and the Department of Commerce, when actions taken under authority of the Act and associated implementing regulations affect, or may affect, Indian lands, tribal trust resources, or the exercise of American Indian tribal rights.'' If there is potential that a tribal activity could cause either direct or incidental take of a species proposed for listing under the Act, then meaningful government-to-government consultation will occur to try to harmonize the Federal trust responsibility to tribes and tribal sovereignty with our statutory responsibilities under the Act. The Secretarial Order also requires us to consult with tribes if the designation of an area as critical habitat might impact tribal trust resources, tribally owned fee lands, or the exercise of tribal rights. We have excluded Tribal lands of the San Carlos Apache Nation from the critical habitat designation pursuant to section 4(b)(2) of the Act.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Arizona Ecological Services Field Office (see **ADDRESSES** section).

Author

The primary authors of this rule are the Arizona Ecological Services Field Office staff (see **ADDRESSES** section) (telephone 602/242–0210).

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. Amend § 17.11(h) by adding an entry for ''Chub, Gila'', in alphabetical order under ''FISHES'', to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
	*	*	*	*	*	*	*
FISHES							
	*	*	*	*	*	*	*
Chub, Gila	*Gila intermedia*	U.S.A. (AZ, NM), Mexico..	Entire	755		17.95(e)	NA
	*	*	*	*	*	*	*

■ 3. Amend § 17.95 (e) by adding critical habitat for Gila chub (*Gila intermedia*), in the same alphabetical order as this species occurs in § 17.11(h), to read has follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes*.

* * * * *

Gila chub (*Gila intermedia*)

(1) Critical habitat for the Gila chub in Grant County, New Mexico, and Yavapai, Gila, Greenlee, Graham, Cochise, Pima, Santa Cruz, and Pinal Counties in Arizona is described in detail and depicted on the following maps below.

(2) Within these areas, the primary constituent elements are the following:

(i) Perennial pools, areas of higher velocity between pool areas, and areas of shallow water among plants or eddies all found in small segments of headwaters, springs, or cienegas of smaller tributaries;

(ii) Water temperatures for spawning ranging from 17 to 24° C (62.6 to 75.2° F), and seasonally appropriate temperatures for all life stages (e.g. varying from approximately 10°C to 30°C);

(iii) Water quality with reduced levels of contaminants, including excessive levels of sediments adverse to Gila chub health, and adequate levels of pH (e.g. ranging from 6.5 to 9.5), dissolved oxygen (e.g. ranging from 3.0 to 10.0) and conductivity (e.g. 100 to 1000 mmhos);

(iv) Food base consisting of invertebrates (e.g., aquatic and terrestrial insects) and aquatic plants (e.g., diatoms and filamentous green algae);

(v) Sufficient cover consisting of downed logs in the water channel, submerged aquatic vegetation, submerged large tree root wads, undercut banks with sufficient overhanging vegetation, large rocks and boulders with overhangs, and a high degree of streambank stability and healthy, intact riparian vegetative community;

(vi) Habitat devoid of nonnative aquatic species detrimental to Gila chub or habitat in which detrimental nonnatives are kept at a level that allows Gila chub to continue to survive and reproduce; and

(vii) Streams that maintain a natural flow pattern including periodic flooding.

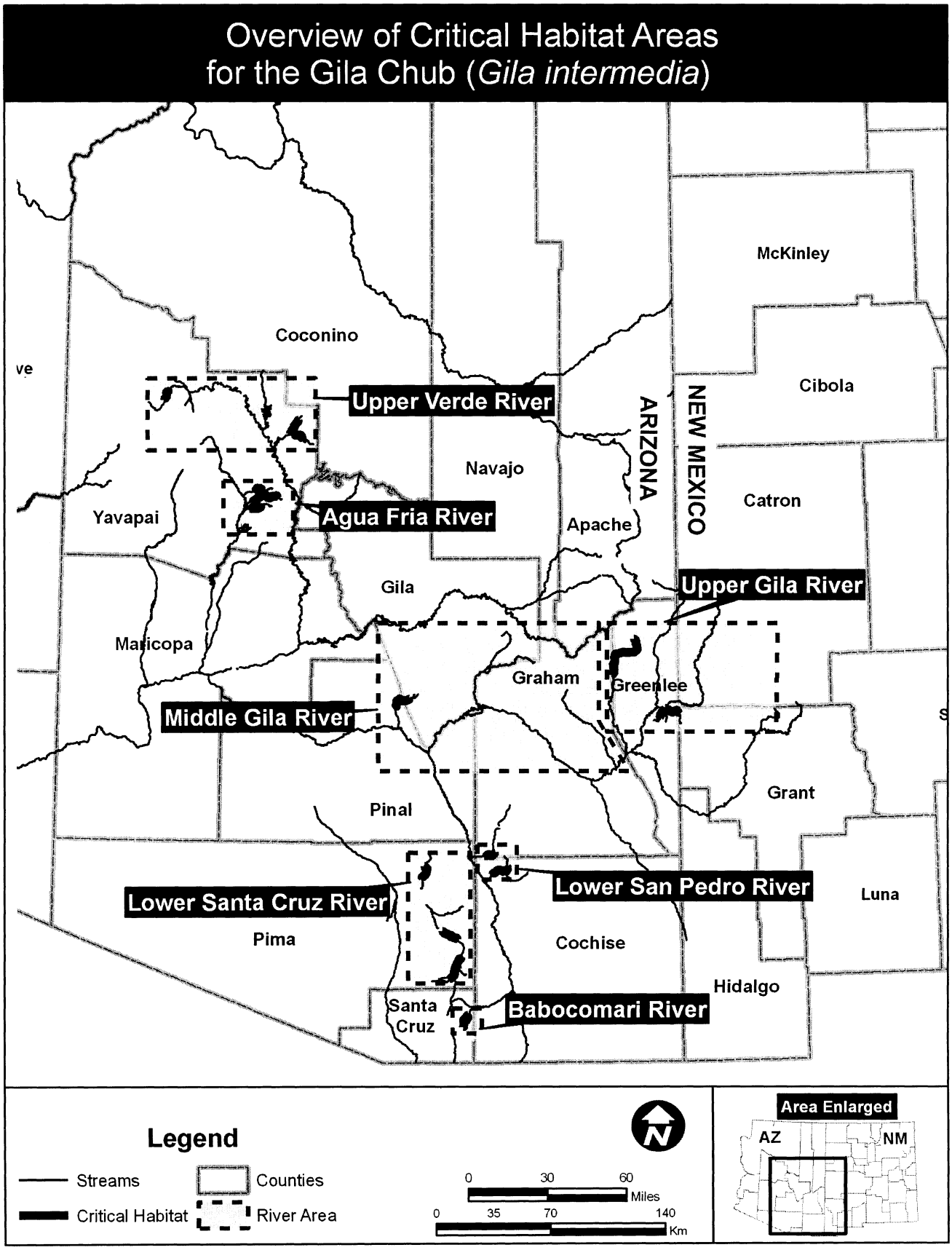
(3) Each stream segment includes a lateral component that consists of 300 feet on either side of the stream channel measured from the stream edge at bank full discharge. This lateral component of critical habitat is intended as a surrogate for the 100-year floodplain.

(4) Lands located within the boundaries of the critical habitat designation, but are excluded by definition include: Existing paved roads; bridges; parking lots; dikes; levees; diversion structures; railroad tracks; railroad trestles; water diversion canals outside of natural stream channels; active gravel pits; cultivated agricultural land; and residential, commercial, and industrial developments. These developed areas do not contain any of the primary constituent elements, do not provide habitat or biological features essential to the conservation of the Gila chub, and generally will not contribute to the species' recovery.

(5) Critical Habitat Map Areas. Data layers defining map areas, and mapping of critical habitat areas, was done using Arc GIS and verifying with USGS 7.5′ quadrangles. Legal descriptions for New Mexico and Arizona are based on the Public Lands Survey System (PLSS). Within this system, all coordinates reported for New Mexico are in the New Mexico Principal Meridian (NMPM), while those in Arizona are in the Gila and Salt River Meridian (GSRM). Township has been abbreviated as ''T'', Range as ''R'', and section as ''sec.'' Where possible, the ending or starting points have been described to the nearest quarter-section, abbreviated as ''¼''. Cardinal directions are also abbreviated (N = North, S = South, W = West, and E = East). All mileage calculations were performed using GIS.

(6) Note: Map 1 (index map) follows:

BILLING CODE 4310–55–P


Overview of Critical Habitat Areas
for the Gila Chub (Gila intermedia)
McKinley
Coconino
Cibola
Upper Verde River
ARIZONA
NEW MEXICO
Navajo
Catron
Yavapai
Agua Fria River
Apache
Gila
Upper Gila River
Maricopa
Graham
Greenlee
Middle Gila River
Grant
Pinal
Lower San Pedro River
Luna
Lower Santa Cruz River
Pima
Cochise
Hidalgo
Santa Cruz
Babocomari River
Legend
Streams
Critical Habitat
Counties
River Area
0 30 60 Miles
0 35 70 140 Km
Area Enlarged
AZ
NM

(7) Area 1: Upper Gila River—Grant County, New Mexico, and Greenlee County, Arizona.

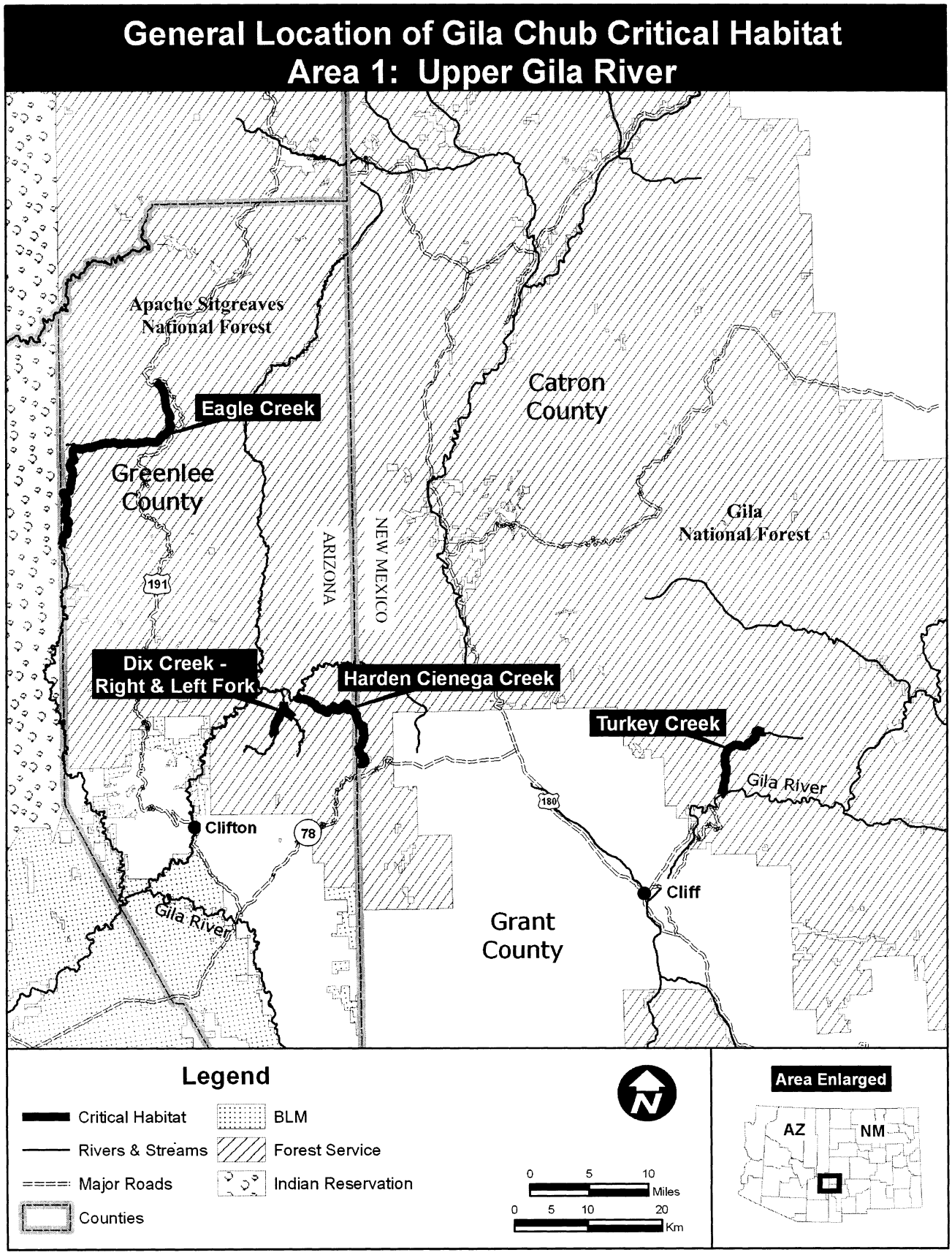
(i) Turkey Creek: 22.3 km (13.8 mi) of creek extending from the edge of the Gila Wilderness boundary at T14S, R16W, sec. 15 NW¼ and continuing upstream to T13S, R15W, sec. 30 NE¼. Land ownership: Gila National Forest and private.

(ii) Eagle Creek and East Eagle Creek: 39.2 km (24.4 mi) of creek extending from its confluence with an unnamed tributary at T1N, R28E, sec. 31 SW¼ upstream to the headwaters of East Eagle Creek just south of Highway 191 in T3N, R29E, sec. 28 SE¼. Land ownership: Apache-Sitgreaves National Forest and private.

(iii) Harden Cienega Creek: 22.6 km (14.0 mi) of creek extending from its confluence with the San Francisco River in GSRM T3S, R31E, sec. 3 SE¼ upstream to the headwaters in NMPM T14S, R21W, sec. 6 NE¼. Land ownership: Apache-Sitgreaves National Forest, Gila National Forest, and private.

(iv) Dix Creek: Portions of the Creek beginning 1.0 mile upstream from its confluence with the San Francisco River at a natural rock barrier in T3S, R31E, sec. 9 NE¼ continuing upstream for 0.9 km (0.6 mi.) to the confluence of the right and left prongs of Dix Creek in T3S, R31E, sec. 9 center. Includes Left Prong of Dix Creek upstream of its confluence with Dix Creek 2.0 km (1.2 mi) to T3S, R31E, section 15 NW¼. Land ownership: Apache-Sitgreaves National Forest. Includes the Right Prong of Dix Creek continuing upstream of its confluence with Dix Creek 4.8 km (3.0 mi) to T3S, R31E, section 20 SE¼. Land ownership: Apache-Sitgreaves National Forest.

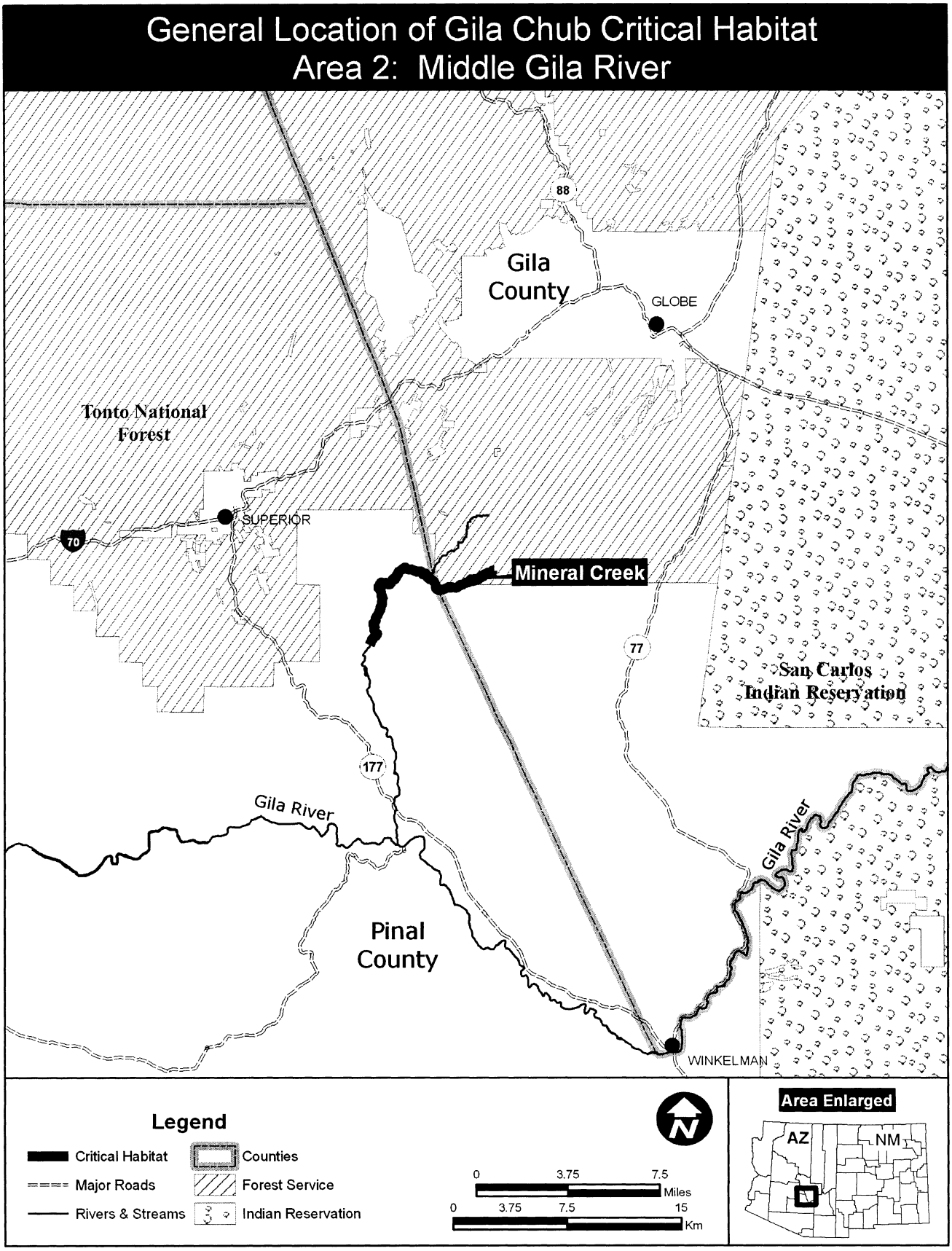
(v) Note: Map of Area 1, Gila River, (Map 2) follows:


General Location of Gila Chub Critical Habitat
Area 1: Upper Gila River
Apache Sitgreaves National Forest
Eagle Creek
Greenlee County
Catron County
Gila National Forest
ARIZONA
NEW MEXICO
191
Dix Creek - Right & Left Fork
Harden Cienega Creek
Turkey Creek
Gila River
180
Clifton
78
Cliff
Grant County
Gila River
Legend
Critical Habitat
Rivers & Streams
Major Roads
Counties
BLM
Forest Service
Indian Reservation
0 5 10 Miles
0 5 10 20 Km
Area Enlarged
AZ
NM

(8) Area 2: Middle Gila River—Gila and Pinal Counties, Arizona.

(i) Mineral Creek: 14.4 km (9.0 mi) of creek extending from its confluence with Devil's Canyon in T2S, R13E, section 35 NW¼ continuing upstream to its headwaters in T2S, R14E, sec. 15 center at the confluence of Mineral Creek and an unknown drainage. Land ownership: Tonto National Forest, State, and private.

(ii) Note: Map of Area Upper Gila River, (Map 3) follows:

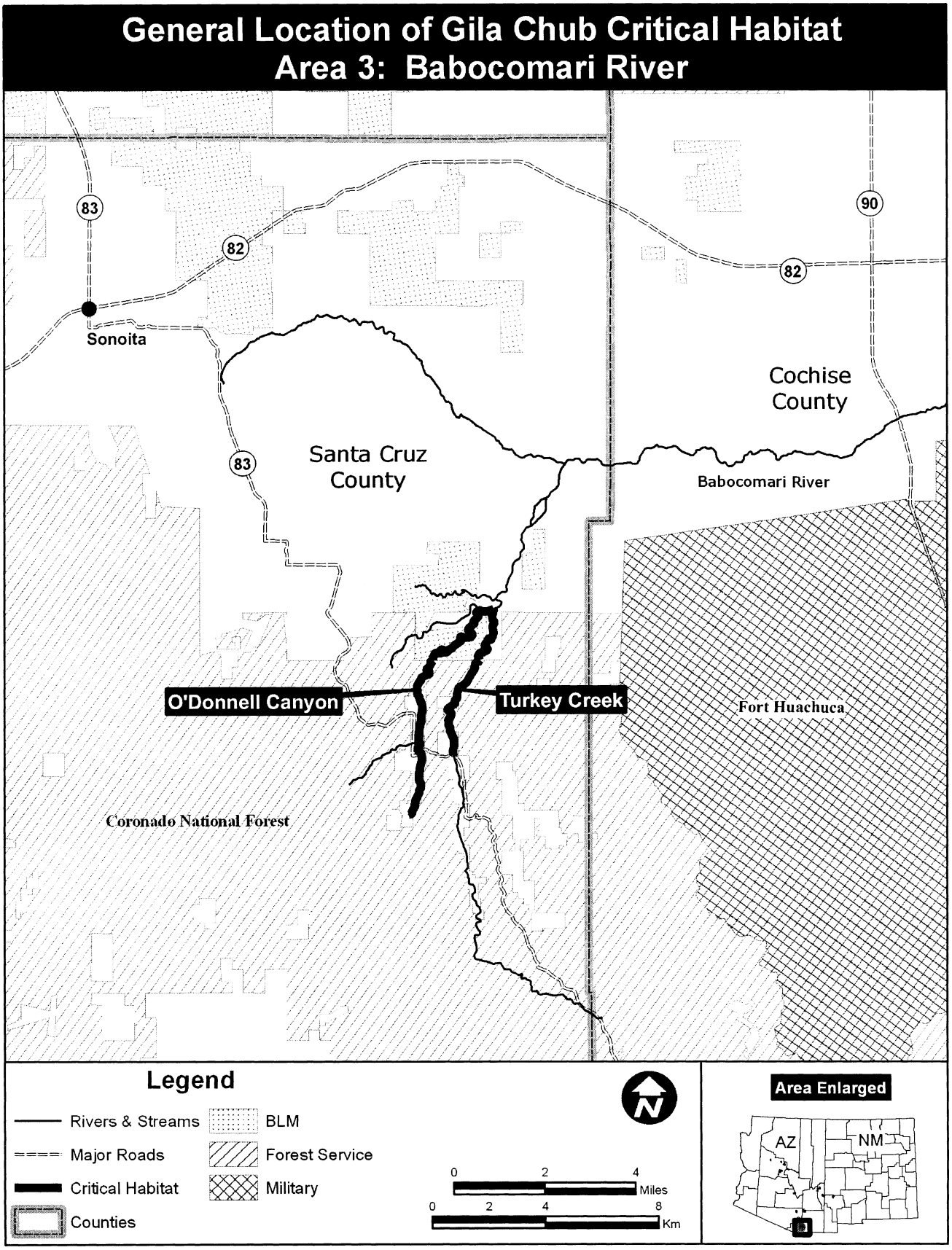

General Location of Gila Chub Critical Habitat
Area 2: Middle Gila River
Gila County
GLOBE
88
Tonto National Forest
SUPERIOR
70
Mineral Creek
77
San Carlos Indian Reservation
177
Gila River
Gila River
Pinal County
WINKELMAN
Legend
Critical Habitat
Major Roads
Rivers & Streams
Counties
Forest Service
Indian Reservation
0 3.75 7.5 Miles
0 3.75 7.5 15 Km
Area Enlarged
AZ
NM

(9) Area 3: Babocomari River—Santa Cruz County, Arizona.

(i) O'Donnell Canyon: 10.0 km (6.2 mi) of creek extending from its confluence with Turkey Creek at T21S, R18E, sec. 22 SE¼ upstream to the confluences of Western, Middle, and Pauline Canyons in T22S, R18E, sec. 17 NE¼. Land ownership: Bureau of Land Management, Coronado National Forest, and private.

(ii) Turkey Creek: 6.3 km (3.9 mi) of creek extending from its confluence with O'Donnell Canyon in T21S, R18E, sec. 22 SE¼ upstream to where Turkey Creek crosses AZ Highway 83 in T22S, R18E, sec. 9 NE¼. Land ownership: Coronado National Forest, and private.

(iii) Note: Map of Area 3, Babocomari River, (Map 4) follows:


General Location of Gila Chub Critical Habitat
Area 3: Babocomari River
83
82
90
Sonoita
Cochise County
Santa Cruz County
Babocomari River
O'Donnell Canyon
Turkey Creek
Fort Huachuca
Coronado National Forest
Legend
Rivers & Streams
Major Roads
Critical Habitat
Counties
BLM
Forest Service
Military
0 2 4 Miles
0 2 4 8 Km
Area Enlarged
AZ
NM

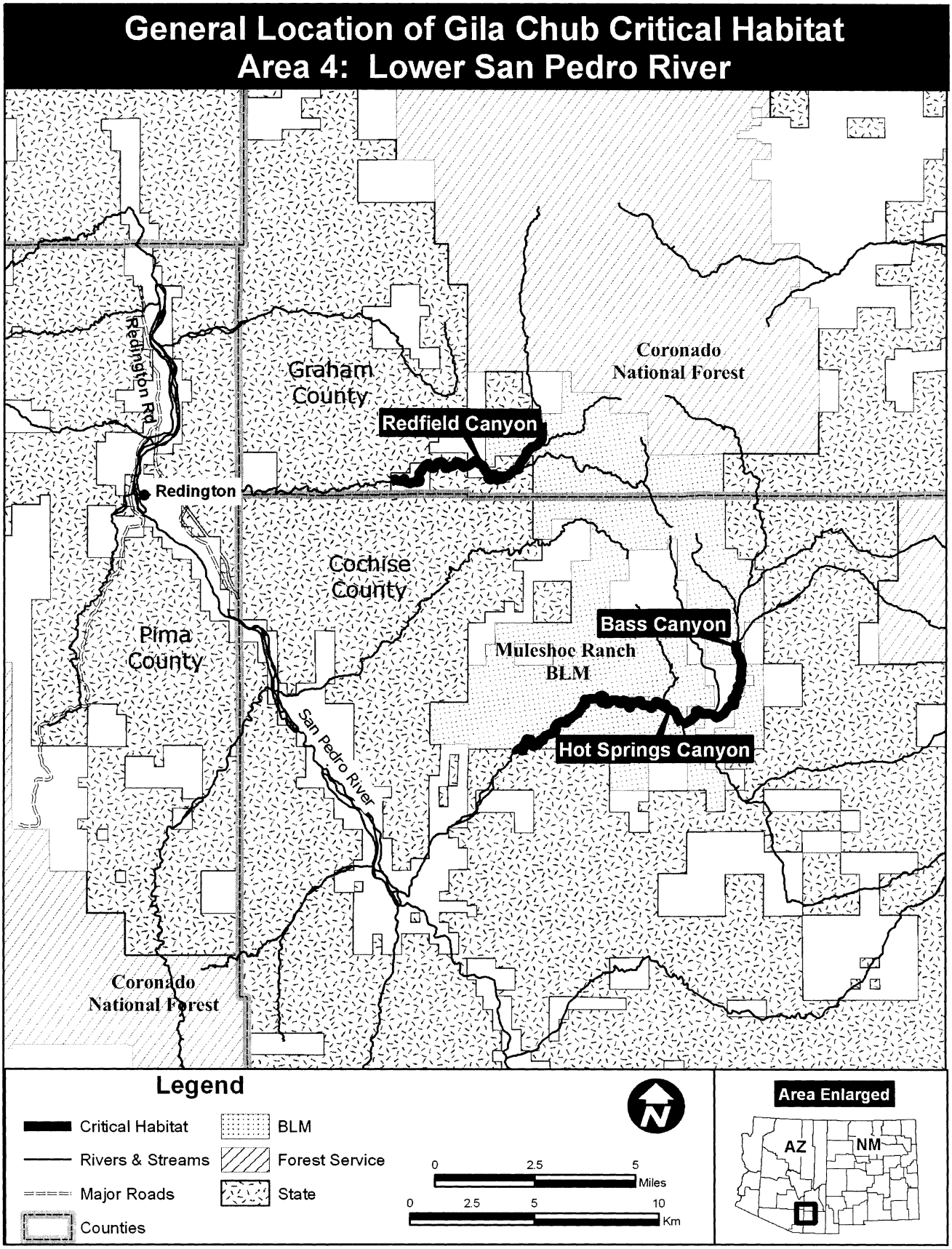
(10) Area 4: Lower San Pedro River—Cochise and Graham Counties, Arizona.

(i) Bass Canyon: 5.5 km (3.4 mi) of creek extending from its confluence with Hot Springs Canyon in T12S, R20E, sec. 36 NE¼ upstream to the confluence with Pine Canyon in T12S, R21E, sec. 20 SW¼. Land ownership: Bureau of Land Management and private.

(ii) Hot Springs Canyon: 10.5 km (6.5 mi) of creek extending from T13S R20E, sec. 5 NW¼ continuing upstream to its confluence with Bass Canyon in T12S, R20E, sec. 36 NE¼. Land ownership: Bureau of Land Management, State, and private (The Nature Conservancy).

(iii) Redfield Canyon: 9.8 km (6.1 mi) of creek extending from the western boundary of T11S, R19E, section 35 upstream to its confluence with Sycamore Canyon in T11S, R20E, sec. 28 NE¼. Land ownership: Bureau of Land Management, State, and private.

(iv) Note: Map of Area 4, Lower San Pedro River, (Map 5) follows:


General Location of Gila Chub Critical Habitat
Area 4: Lower San Pedro River
Redington Rd
Graham County
Coronado National Forest
Redfield Canyon
Redington
Cochise County
Pima County
Bass Canyon
Muleshoe Ranch BLM
San Pedro River
Hot Springs Canyon
Coronado National Forest
Legend
Critical Habitat
Rivers & Streams
Major Roads
Counties
BLM
Forest Service
State
0 2.5 5 Miles
0 2.5 5 10 Km
N
Area Enlarged
AZ
NM

(11) Area 5: Lower Santa Cruz River—Pima County, Arizona.

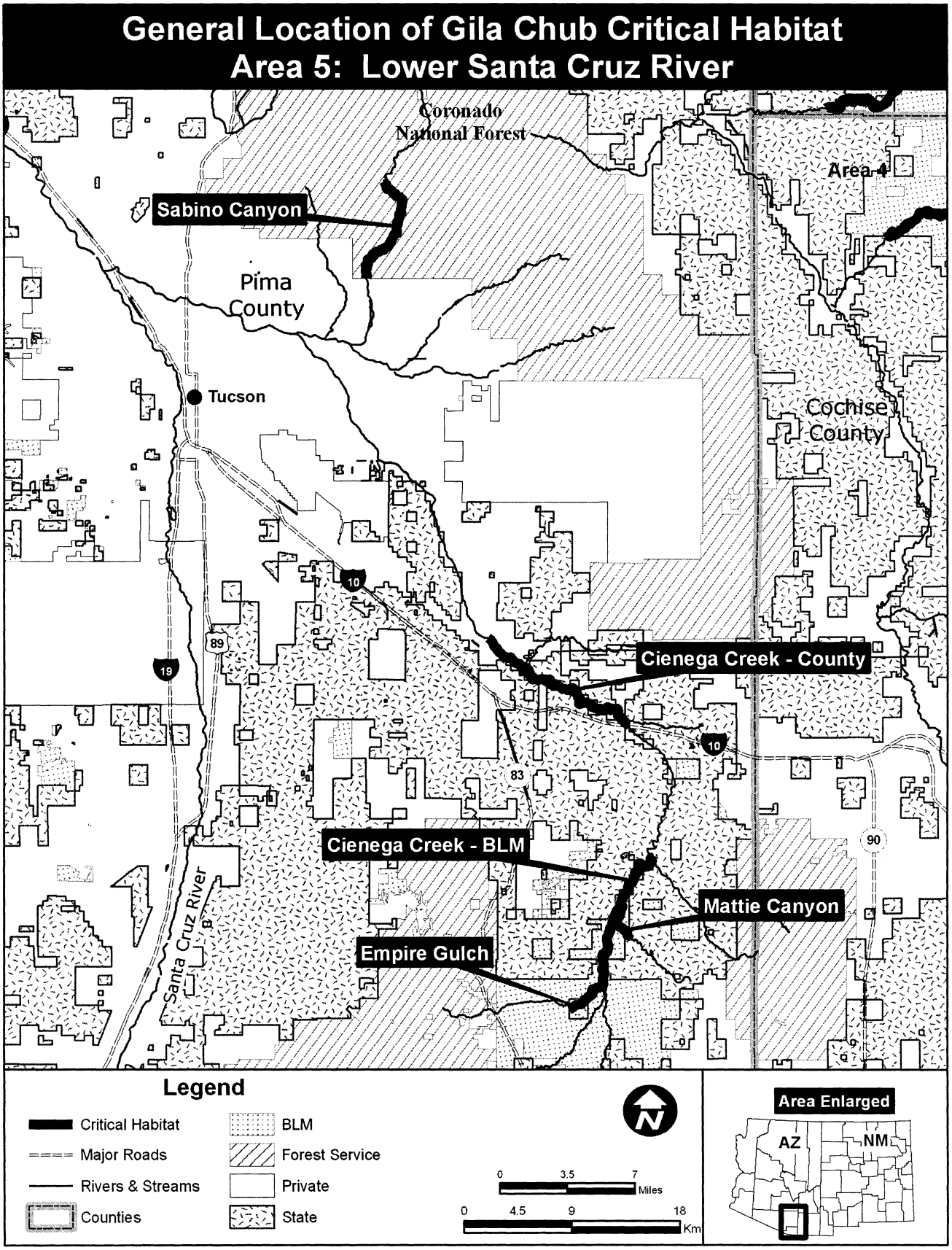
(i) Cienega Creek: (Two Segments). First segment includes 14.2 km (8.8 mi) of creek extending from where Cienega Creek becomes Pantano Wash T16S, R16E, at the boundary of sec. 14 and sec. 23 to where it crosses Interstate 10 at T17S, R17E, sec. 1 NW¼. Land ownership: County and State Trust. Second segment includes 13.6 km (8.4 mi) of creek extending from T18S, R18E, sec. 6 S½ to its confluence with Empire Gulch at T19S, R17E, sec. 3 SE¼. Land ownership: Bureau of Land Management and State.

(ii) Mattie Canyon: 4.0 km (2.5 mi) of creek extending from its confluence with Cienega Creek in T18S, R17E, sec. 23 NE¼ upstream to the Bureau of Land Management Boundary in T18S, R17E, sec. 25 SW¼. Land Ownership: Bureau of Land Management.

(iii) Empire Gulch: 5.2 km (3.2 mi) of creek extending from its confluence with Cienega Creek in T19S, R17E, sec. 3 SE¼ continuing upstream to T19S, R17E, sec. 16 NW¼ on the western boundary of section 16. Land Ownership: Bureau of Land Management and State.

(iv) Sabino Canyon: 11.1 km (6.9 mi) of creek extending from the southern boundary of the Coronado National Forest in T13S, R15E, sec. 9 SE¼ upstream to its confluence with the West Fork of Sabino Canyonin T12S, R15E, sec. 22 NE¼. Land ownership: Coronado National Forest.

(v) Note: Map of Area 5, Lower Santa Cruz River, (Map 6) follows:


General Location of Gila Chub Critical Habitat
Area 5: Lower Santa Cruz River
Coronado National Forest
Area 4
Sabino Canyon
Pima County
Tucson
Cochise County
Cienega Creek - County
Cienega Creek - BLM
Mattie Canyon
Empire Gulch
Santa Cruz River
10
89
19
83
90
Legend
Critical Habitat
Major Roads
Rivers & Streams
Counties
BLM
Forest Service
Private
State
0 3.5 7 Miles
0 4.5 9 18 Km
Area Enlarged
AZ
NM

(12) Area 6: Upper Verde River—Yavapai County, Arizona.

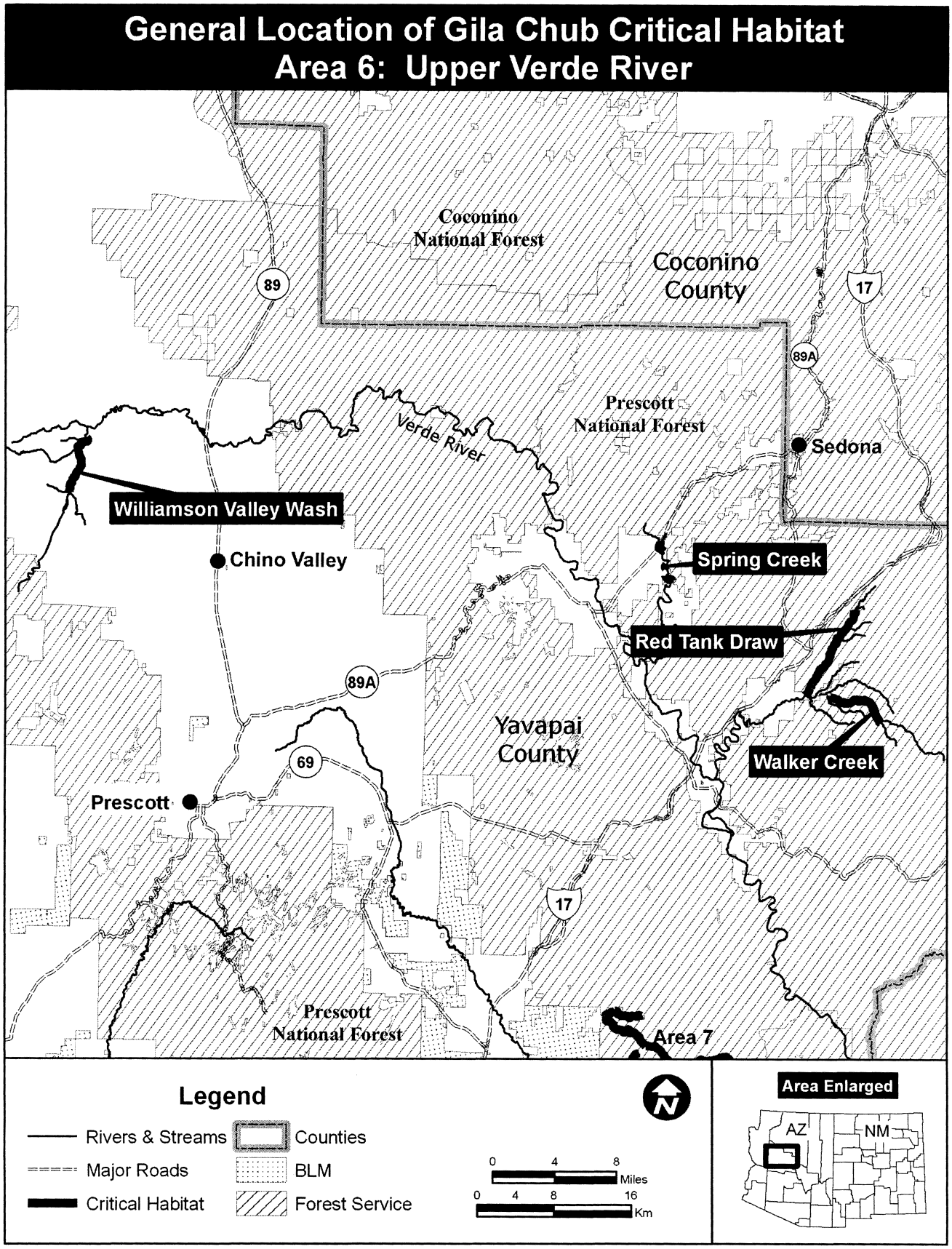
(i) Walker Creek: 7.6 km (4.7 mi) of creek extending from Prescott National Forest Road 618 in T15N, R6E, sec. 33 SW¼ upstream to its confluence with Spring Creek in T14N, R6E, sec. 1, SE¼. Land ownership: Coconino National Forest and private.

(ii) Red Tank Draw: 11.1 km (6.9 mi) of creek extending from the National Park Service boundary just upstream of its confluence with Wet Beaver Creek in T15N, R6E, sec. 31 NE¼ upstream to the confluence of Mullican and Rarick canyons in T15N, R6E, sec. 2 NW¼. Land ownership: Coconino National Forest and private.

(iii) Spring Creek: 2.7 km (1.7 mi) of creek including all non-private land extending from T16N, R4E, sec. 27 SE¼ at the boundary of Forest Service land and continuing upstream to the Arizona Highway 89A crossing in T16N, R4E, sec. 16 SE¼. Land ownership: Coconino National Forest, and State.

(iv) Williamson Valley Wash: 7.2 km (4.4 mi) of creek extending from the gauging station in T17N, R3W, sec. 7 SE¼ upstream to the crossing of the Williamson Valley Road in T17N, R4W, sec. 36 NE¼. Land ownership: private.

(v) Note: Map of Area 6, Upper Verde River, (Map 7) follows:


General Location of Gila Chub Critical Habitat
Area 6: Upper Verde River
Coconino National Forest
Coconino County
89
17
89A
Prescott National Forest
Verde River
Sedona
Williamson Valley Wash
Chino Valley
Spring Creek
Red Tank Draw
89A
Yavapai County
Walker Creek
69
Prescott
17
Prescott National Forest
Area 7
Legend
Rivers & Streams
Major Roads
Critical Habitat
Counties
BLM
Forest Service
0 4 8 Miles
0 4 8 16 Km
Area Enlarged
AZ
NM

(13) Area 7: Agua Fria River—Yavapai County, Arizona.

(i) Little Sycamore Creek: 4.7 km (2.9 mi) of creek extending from its confluence with Sycamore Creek in T11N, R4E, sec. 6 SW¼ upstream to T11N, R4E, sec. 4 NE¼. Land ownership: Prescott National Forest and private.

(ii) Sycamore Creek: 18.3 km (11.4 mi) of creek extending from its confluence with Little Sycamore Creek at T11N, R4E, sec. 6 SW¼ upstream to Nelson Place Spring in T11N, R5E, sec. 21 NE¼. Land ownership: Prescott National Forest and private.

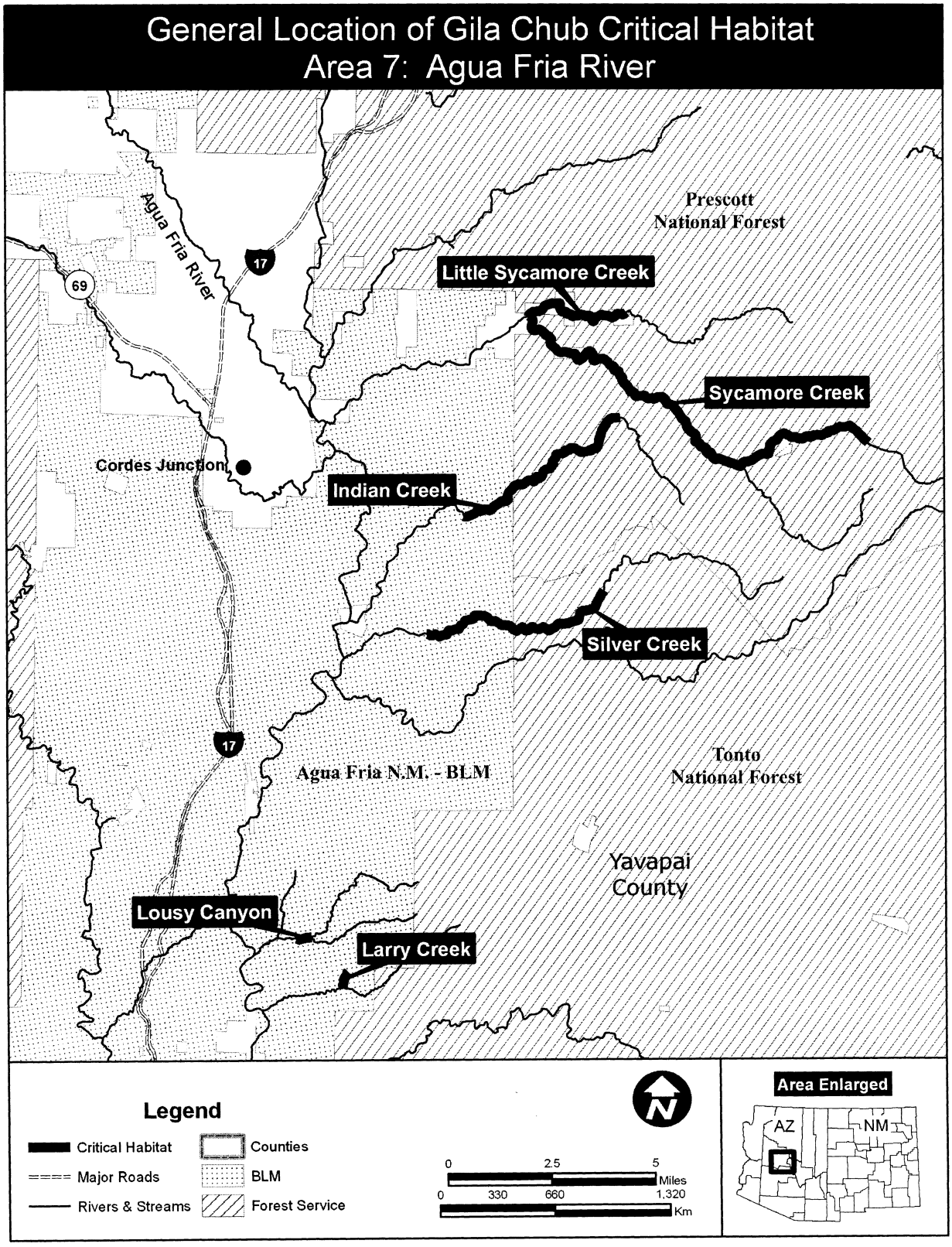
(iii) Indian Creek: 8.4 km (5.2 mi) of creek extending from T11N, R3E, sec. 35 NE¼ to Upper Water Springs in T11N, R4E, sec. 16 SE¼. Land ownership: Bureau of Land Management, Prescott National Forest, and private.

(iv) Silver Creek: 8.5 km (5.3 mi) of creek extending from T10N, R3E, sec. 10 SE¼ continuing upstream to the spring in T10N, R4E, Sec. 4 SW¼. Land ownership: Tonto National Forest and Bureau of Land Management.

(v) Lousy Canyon: Portions of the creek from the confluence of an unnamed tributary upstream to the fork with an unnamed tributary approximately 0.6 km (0.4 mi) upstream, all entirely T9N, R3E, sec. 5 NW¼. Land ownership: Bureau of Land Management.

(vi) Larry Creek: Portions of the creek from an unnamed tributary and continuing upstream 0.7 km (0.4 mi) to the confluence of two adjoining unnamed tributaries, entirely within T9N, R3E, sec. 9 NW¼. Land ownership: Bureau of Land Management.

(vii) **Note:** Map of Area 7, Aqua Fria River, (Map 8) follows:



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Dated: October 24, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–21498 Filed 11–1–05; 8:45 am]

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Federal Register

Wednesday,
November 2, 2005

Part V

Department of Housing and Urban Development

Notice of Funding Availability for Fiscal Year (FY) 2005 Mainstream Housing Opportunities for Persons With Disabilities Program (Mainstream Program); Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 5002–N–01]

Notice of Funding Availability for Fiscal Year (FY) 2005 Mainstream Housing Opportunities for Persons With Disabilities Program (Mainstream Program)

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA).

Overview Information

A. Federal Agency Name: Department of Housing and Urban Development, Office of Public and Indian Housing, Office of Public Housing and Voucher Programs.

B. Funding Opportunity Title: Mainstream Housing Opportunities for Persons With Disabilities Program (Mainstream Program).

C. Announcement Type: Initial Announcement.

D. Funding Opportunity Number: The **Federal Register** number for this NOFA is FR–5002-N–01. The Office of Management and Budget (OMB) paperwork approval number is 2577–0169.

E. Catalog of Federal Domestic Assistance (CFDA) Number: 14.871, Section 8 Housing Choice Vouchers.

F. Application Deadline: The application submission date is January 3, 2006. Applications must be submitted through *www.grants.gov* and must be received by grants.gov no later than 11:59:59 p.m. Eastern time on the application submission date. Applicants receiving a waiver of the electronic submission requirement must send their application via the United States Postal Service (USPS) no later than 11:59:59 p.m. Eastern time on the application submission date. Please see the General Section of the SuperNOFA (70 FR 13575) published March 21, 2005, for further information about application submission, delivery, and timely receipt requirements.

G. Optional, Additional Overview Content Information: The purpose of the Mainstream Program is to provide vouchers under the Housing Choice Voucher Program to enable persons with disabilities (elderly and non-elderly) to access affordable private housing. Public housing agencies (PHAs) and nonprofit organizations that provide services to the disabled are eligible to apply. Those PHAs and nonprofit organizations interested in applying for the approximately $10.2 million in five-year budget authority (anticipated to fund approximately 250 vouchers) under this funding announcement should carefully review the General Section of the SuperNOFA published March 21, 2005 (70 FR 13575); the additional guidance and other helpful information located at *www.hud.gov* (click on ''Grants'' and then click on ''Funds Available''); and the detailed information contained in this Mainstream Program funding announcement. The available funding is derived from Fiscal Year (FY) 2005 Section 811 funding, and previously unobligated Mainstream funding from FY 2000 and FY 2003.

Full Text of Announcement

I. Funding Opportunity Description

A. Authority and Purpose

Authority for this program is found in the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. 8013 (Pub. L. 101–625), the Consolidated Appropriations Act, FY 2005 (Pub. L. 108–447, approved December 8, 2004), and in chapters of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror and Tsunami Relief, 2005 (Pub. L. 109–13, approved May 11, 2005). The Secretary has established a Mainstream Housing Opportunities for Persons With Disabilities Program (Mainstream Program) to provide vouchers to enable persons with disabilities to access affordable private housing of their choice. The Mainstream Program will assist PHAs and nonprofit organizations in providing housing choice vouchers to a segment of the population recognized by HUD's housing research as having one of the worst housing needs of any group in the United States, *i.e.*, very low-income households with adults with disabilities. In addition, the Mainstream Program will assist persons with disabilities who often face difficulties in locating suitable and accessible housing on the private market. The vouchers that HUD will provide under this announcement must be made available to eligible disabled families regardless of their type of disability. (See the definition of disabled family in section I. B. 1. of this announcement.) The Mainstream Program vouchers must not be issued by the administering agency on the basis of any preference system favoring any particular type of disability over another, nor shall the vouchers be issued solely on the basis of an administering agency's waiting list which, in turn, is based on that agency having heretofore served only certain types of disabled persons. The Housing Choice Voucher Program regulations provide at 24 CFR 982.207(b)(3) that a PHA may give preference for admission of families that include a person with disabilities; however, the PHA may not give preference for admission of persons with a specific disability. This regulatory requirement is also applicable to nonprofit organizations that receive funding under this announcement, as such organizations must comply with the regulatory requirements applicable to the Housing Choice Voucher Program. Because Mainstream vouchers are targeted for use by disabled persons, each successful applicant will need to revise the administrative plan for its voucher program to clearly indicate that Mainstream vouchers will be issued only to disabled persons. Preferences within the disability category; *e.g.*, disabled veterans, etc., may be used as long as the result is not to give a preference to the admission of persons with any specific type of disability.

B. Definitions

The following definitions apply to the approximately $10.2 million in five-year budget authority available under this funding announcement.

1. Disabled Family. Disabled family means a family whose head, spouse, or sole member is a person with disabilities. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.

2. Person With Disabilities. a. Means a person who:

(1) Has a disability as defined in 42 U.S.C. 423;

(2) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:

(a) Is expected to be of long-continued and indefinite duration;

(b) Substantially impedes his or her ability to live independently; and

(c) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or

(3) Has a developmental disability as defined in 42 U.S.C. 6001;

b. Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome;

c. For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence.

Note: HUD is exercising its waiver authority under the ''Housing for Persons With Disabilities'' section of the

Consolidated Appropriations Act, 2005, to use the definition of ''person with disabilities'' found at section 3 (b)(3)(E) of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (''the Act''), as implemented in the HUD regulations for the Housing Choice Voucher Program at 24 CFR 5.403, in lieu of the definition of ''person with disabilities'' found at 42 U.S.C. 8013 (k)(2).

3. *Housing Choice Voucher Search Assistance.* Assistance to increase access by program participants to housing units in a variety of neighborhoods (including areas with low poverty concentrations) and to locate and obtain units suited to their needs.

II. Award Information

A. Available Funds

Approximately $10.2 million in five-year funding is available for approximately 250 vouchers for supportive housing for persons with disabilities. This allocation is consistent with the Consolidated Appropriations Act, FY 2005 (Pub. L. 108–447, approved December 8, 2004), and the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror and Tsunami Relief, 2005 (Pub. L. 109–13, approved May 11, 2005). Congressional rescission of a portion of HUD's appropriated funding resulted in the $10 million in appropriations being reduced to $9,920,000. This amount was supplemented by prior year unobligated Mainstream funding from FY 2000 and FY 2003 (also derived from section 811 funding) totaling approximately $318,000, for a grand total for Mainstream funding of approximately $10.2 million. All future references in this funding announcement to five-year budget authority are based upon these funding sources. All of the approximately $10.2 million in Mainstream funding is for use in housing persons with disabilities.

B. Housing Choice Voucher Funding

1. Determination of Funding Amount for the Applicant's Requested Number of Vouchers. HUD's Housing Voucher Financial Management Division will determine the amount of funding that an applicant will be awarded under this announcement based upon actual annual per unit costs.

2. Determination Process. a. HUD will extract from the Voucher Management System (VMS) the actual housing assistance payments (HAP) costs for five-year Mainstream units, divided by the total units leased, both as reported by the PHA in VMS and verifiable, for the most recently reported quarter. HUD will multiply the monthly per unit cost by 12 to determine the annual per unit cost and may adjust that total by the applicable Annual Adjustment Factor, to arrive at a funding amount for HAP costs. The HAP dollar amount, approved by HUD for an awardee for five-year Mainstream vouchers, will not be increased by HUD during the five-year term.

b. If a PHA does not currently administer a five-year Mainstream Program, the per unit funding amount will be that amount used to calculate the PHA's Calendar Year 2005 renewal funding for the regular voucher program.

c. Administrative fees will be calculated on the basis of the per unit month rate determined for the PHA from its Calendar Year 2005 renewal fee allocation.

C. Unfunded Approvable Applications

PHAs or nonprofit organizations with approvable applications that are not funded in whole or in part, due to insufficient funds available under this funding announcement, shall be funded first in FY 2006, provided HUD receives additional appropriations for the Mainstream Program for FY 2006.

III. Eligibility Information

A. Eligible Applicants

PHAs and nonprofit organizations that provide services to the disabled (as defined in section I. B. 1. of this announcement) are eligible applicants for the five-year budget authority funding available under this funding announcement. PHAs with less than 300 vouchers under an annual contributions contract (ACC), nonprofit organizations not previously funded under the Mainstream Program, as well as PHAs or nonprofit organizations that fall into any of the categories in section III. C. 1. of this announcement, are ineligible to have an application funded under this announcement. Indian Housing Authorities (IHAs), Indian tribes, and their tribally designated housing entities are not eligible to apply for new increments of housing choice voucher funding because the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*), does not allow HUD to enter into new housing choice voucher ACCs with IHAs after September 30, 1997.

B. Cost Sharing or Matching

None required.

C. Other

1. Program Related Threshold Requirements. An applicant must be eligible under the following threshold requirements at the time of the application due date, as well as at such subsequent time of HUD's selection of awardees. The Grants Management Center (GMC) will use information available within HUD's information systems, as well as coordinate with HUD's local HUD field offices, in assessing whether applicants fall into any of the threshold categories. Applications from PHAs or nonprofit organizations that fall into any of the following threshold categories will not be processed:

a. PHAs or nonprofit organizations that do not meet the fair housing and civil rights compliance threshold requirements of Sections III. C. 2. c. and III. C. 4. a. and b. of the General Section of the SuperNOFA (70 FR 13575) published March 21, 2005.

b. The applicant is designated as troubled by HUD under the Section 8 Management Assessment Program (SEMAP), or has major program management findings in an Inspector General audit for its voucher program that are unresolved, or has other significant program compliance problems that are not resolved. Major program management findings, or significant program compliance problems, are those that would cast doubt on the capacity of the applicant to effectively administer any new housing choice voucher funding in accordance with applicable HUD regulatory and statutory requirements. The only exception to this category is if the applicant has been identified under the policy established in section III. C. 2. c. of this announcement and the applicant makes application with a designated contract administrator.

c. The PHA or nonprofit organization has failed to expend 97 percent of its allocated budget authority (ABA) for its voucher program. The percent of allocated budget authority expended (PABAE) for a PHA's or nonprofit organization's voucher program will be calculated by HUD Headquarters' Housing Voucher Financial Management Division based upon the expenditure information submitted electronically to HUD's voucher management system (VMS) on a quarterly basis for the most recent 12-month period (prior to the Mainstream application due date). The PABAE will be determined by HUD dividing the amount of housing assistance payments (HAP) by the ABA. If data in the VMS is not available or cannot be relied upon, HUD will use other sources of available information, such as the HUD Central Accounting Processing System (HUDCAPS), up to December 31, 2004, or financial statement information

submitted to the Real Estate Assessment Center through the Financial Assessment Sub-System. (Note: If the PABAE is 96.5 percent but less than 97 percent, the PABAE shall be rounded up to 97 percent.) See section IV. B. 1. g. of this funding announcement, which addresses the certification to be submitted by Moving to Work (MTW) agencies in connection with the 97 percent expenditure requirement referenced above.

d. The PHA or nonprofit organization is involved in litigation and HUD determines that the litigation may seriously impede the ability of the applicant to administer the vouchers.

e. An application that does not comply with the requirements of 24 CFR 982.103 and this program section after the expiration of the 7-calendar day technical deficiency correction period.

f. The application was submitted after the application due date.

g. The application was not submitted to the official place of receipt as indicated in section F. under Overview Information at the beginning of this funding announcement, or as indicated in section IV. F. of this funding announcement, as appropriate.

h. The applicant has been debarred or otherwise disqualified from providing assistance under the program.

i. The PHA did not have its PHA plans approved by HUD for the FY 2004 plan cycle on the application due date for this funding announcement. (This category of ineligibility does not apply to nonprofit organizations whose Housing Choice Voucher Program is based solely upon previously approved housing choice vouchers under the Mainstream Program.)

j. The applicant does not have a financial management system that meets federal standards. See Section III. C. 2. f. of the General Section of the SuperNOFA (70 FR 13575) published March 21, 2005, regarding those applicants that may be subject to HUD's arranging for a pre-award survey of an applicant's financial management system.

k. The PHA does not have a HUD-approved designated housing plan as of the application due date under this funding announcement (this does not apply to nonprofit applicants).

l. The applicant is not in compliance with the Uniform Financial Reporting Standards (UFRS) at the time of the application due date.

m. The applicant submits an electronic application with a virus. (The applicant may resubmit a virus-free electronic application, but it must be resubmitted at least 24 hours prior to the due date.)

n. The applicant is not registered at *www.grants.gov* as the authorized organization representative.

o. The applicant submits an application using a Dun and Bradstreet Number System (DUNS) number under which it is not registered to submit an electronic application to *www.grants.gov.*

2. PHA Program Requirements.

a. A PHA may submit only one application under this announcement. This one-application-per-PHA limit applies regardless of whether or not the PHA is a state or regional PHA, except in those instances where such a PHA has more than one PHA code number due to its operating under the jurisdiction of more than one HUD field office. In such an instance, a separate application under each code shall be considered for funding, with the cumulative total of vouchers applied for under the applications not to exceed the maximum of 20 vouchers the PHA is eligible to apply for under section IV. E. of this announcement, *i.e.*, no more than the number of vouchers the same PHA would be eligible to apply for if it only had one PHA code number.

b. PHAs are encouraged to involve nonprofit organizations that provide services to disabled families, as defined in section III. C. 3. of this announcement, in the administration of the Mainstream Program's vouchers. In the past, such organizations have frequently demonstrated a capacity to assist disabled families and have demonstrated an in-depth knowledge of the disability community.

(1) A nonprofit organization could function as either a contract administrator for the PHA's Mainstream vouchers, or as a subcontractor responsible for providing case management services or assisting disabled families to locate suitable housing, gaining access to supportive services, or identifying private funding sources to cover the costs of unit modifications needed as a reasonable accommodation.

(2) Such contractual arrangements must, however, ensure equal opportunity among the wide variety of disabled populations in the PHA's service area.

c. In some cases, an applicant currently administering the Housing Choice Voucher Program has, at the time of publication of the SuperNOFA, been designated by HUD as troubled under the SEMAP, has major program management findings from Inspector General audits that are unresolved, or has other significant program compliance problems. HUD will reject an application from such an applicant as a contract administrator if, on the application due date, the troubled designation under SEMAP has not been removed by HUD, and the findings or other significant program compliance problems are not resolved. If the applicant wants to apply for funding under this announcement, it must submit an application that designates another contractor that is acceptable to HUD. The application must include an agreement by the other contractor to administer the new funding increment on behalf of the applicant, and (in the instance of an applicant with unresolved major program management findings or other significant program compliance problems) a statement that outlines the steps the applicant is taking to resolve the program findings or compliance problems.

Immediately after the publication of this funding announcement, the Office of Public Housing in the local HUD field office will notify, in writing, those PHAs and nonprofit organizations that have been designated by HUD as troubled under SEMAP, and those PHAs and nonprofit organizations with unresolved major program management findings or other significant program compliance problems that are not eligible to apply without such an agreement. Concurrently, the local HUD field office will provide a copy of each such written notification to the Director of the Grants Management Center (GMC). The applicant may appeal the decision, in writing, if HUD has mistakenly classified the applicant as having unresolved major program findings or other significant program compliance problems. The applicant may not appeal its designation as troubled under SEMAP. Any appeal with respect to unresolved major program management findings or other significant program compliance problems must be accompanied by conclusive evidence of HUD's error (*i.e.*, documentation showing that the finding has been cleared or the program compliance problem has been resolved) and must be received prior to the application deadline. The appeal should be submitted to the local HUD field office where a final determination shall be made. Concurrently, the local HUD field office shall provide the GMC with a copy of the applicant's written appeal and the field office's written response to the appeal. Copies of all letters of ineligibility and matters that relate to PHA appeals referenced in this paragraph must be submitted to the GMC by the field office so as to be received by the GMC no later than 10 days after the application deadline date.

Major program management findings, or significant program compliance problems, are those that would cast doubt on the capacity of the applicant to effectively administer any new housing choice voucher funding in accordance with applicable HUD regulatory and statutory requirements.

(**Note:** If any additional PHAs or nonprofit organizations fall into the above category prior to HUD's announcement of awards under this NOFA, but subsequent to the local HUD field office's notification of the GMC addressed above, the field office shall immediately notify the GMC of the applicant's name and the category into which the applicant falls, *i.e.*, designated as troubled under SEMAP, major unresolved Office of Inspector General (OIG) management findings, or other significant program compliance problems. As indicated in section III. C. 1. of this NOFA, an applicant must be eligible for funding at the time of the application due date, as well as at such subsequent time of HUD's selection of awardees. No PHA appeals, based upon field office letters of ineligibility issued after the application deadline date, shall be considered for purposes of eligibility for funding under this funding announcement.)

3. Nonprofit Organization Program Requirements. A nonprofit organization may submit only one application under this announcement. For purposes of the Mainstream Program, a nonprofit organization shall be defined as an organization, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual, that provides services to persons with disabilities and has received a federal tax-exempt designation, under section 501(c) (3) of the Internal Revenue Code, from the U.S. Internal Revenue Service.

a. The nonprofit entity must:

(1) Have a voluntary board;

(2) Be authorized by its charter or state law to enter into a contract with the Federal Government to provide housing assistance to persons with disabilities;

(3) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles, or designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles;

(4) Practice nondiscrimination in the provision of assistance; and

(5) Provide services to the disabled as part of its ongoing activities and responsibilities.

b. Nonprofit organizations are encouraged to seek out PHAs in their geographic area to develop cooperative contractual relationships under the Mainstream Program and to enhance services to disabled families. In addition to contacting local PHAs, nonprofit organizations may also wish to contact regional (multi-county) or statewide PHAs.

4. Eligible Participants. Only a disabled family that is income-eligible under 24 CFR 982.201(b)(1), as well as otherwise eligible under the regulations at 24 CFR 982.201, may receive a voucher awarded under the Mainstream Program. Applicants with disabilities must be selected from the PHA's or nonprofit organization's housing choice voucher waiting list. Additional information on those families and individuals eligible to receive a voucher is located at the following HUD Web site: *http://www.hud.gov/offices/pih/programs/hcv.*

IV. Application and Submission Information

A. Website Addresses To Request Application Package

This section describes how you may obtain application forms, additional information about the Mainstream Program NOFA, and technical assistance. Copies of the published Mainstream NOFA and related application forms for this NOFA may be downloaded from the grants.gov Web site at *www.grants.gov/Apply.* (Be sure to download both the instructions package and the application package. Information from both packages will be necessary to have a successful submission.) You may choose from links provided under the topic ''Search Grant Opportunities,'' which allows you to do a basic search or to browse by category or agency. The NOFA may also be found by using the search function at *www.grants.gov.* If you have difficulty accessing the information, you may receive customer support from Grants.gov by calling its help line at (800) 518–GRANTS or sending an e-mail to *support@grants.gov.* The Grants.gov help desk is open from 7 a.m. to 9 p.m. Eastern time, Monday through Friday, except federal holidays. The operators will assist you in accessing the information. If you do not have Internet access and you need to obtain a copy of this NOFA, you may contact HUD's NOFA Information Center toll-free at (800) HUD–2209 and immediately submit a request for a waiver of the electronic requirement. A copy of this funding announcement for the Mainstream Program, the forms to be submitted with the application, and reference materials for use in preparing an application may be downloaded from the following Web site: *www.grants.gov/Apply,* by clicking on Apply Step 1.

1. Application Kit. There is no application kit for this program. This announcement contains all the information necessary for the submission of your application for voucher funding for the Mainstream Program. The materials needed to apply are found in the instruction download and application download found at *www.grants.gov/Apply.* HUD has made an effort to improve the readability of this NOFA and publish all required forms for application submission in the **Federal Register**. Please pay attention to the registration and submission requirements, including the format for submission, for the Mainstream NOFA to ensure that you have submitted all required elements of your application. The published **Federal Register** document is the official document that HUD uses to solicit applications. Therefore, if there is a discrepancy between any materials published by HUD in its **Federal Register** publications and other information provided in paper copy, electronic copy, or at *www.grants.gov,* the **Federal Register** publication prevails. Please be sure to review your application submission against the requirements in the **Federal Register** for this program NOFA.

2. Further Information. A guidebook to HUD programs entitled, ''Connecting with Communities: A User's Guide to HUD Programs and the FY 2005 NOFA Process,'' is available from the HUD NOFA Information Center and the HUD Web site at: *www.hud.gov/offices/adm/grants/fundsavail.cfm.* The guidebook provides a brief description of all HUD programs, identifies eligible applicants for the programs, and provides examples of how programs can work in combination to serve local community needs. The telephone numbers for the NOFA Information Center are (800) HUD–8929, or for the hearing impaired, (800) HUD–2209 (TTY) (these are toll-free numbers). The NOFA Information Center is open between the hours of 10:00 a.m. and 6:30 p.m. Eastern time, Monday through Friday, except federal holidays.

B. Content and Form of Application Submission

You must meet all the registration, application, and submission requirements described in Section IV. B. of the General Section of the SuperNOFA (70 FR 13581).

1. Content of Application. Applicants are requested to *read this section very carefully, as it addresses the specific information that must be in the applications submitted to HUD* under this NOFA. Applications failing to

provide this information will be determined either ineligible for processing, or in the instance of an application having a curable (correctable) technical deficiency (see the General Section of the SuperNOFA (70 FR 13575) published March 21, 2005), the applicant will be requested to submit additional information. *Those application submission items identified below in this section IV. B. 1. as ''not curable'' shall mean that any item; e.g., Mainstream Program Operating Plan, for which the applicant does not provide all the requested information shall result in the application being determined ineligible for processing.* The turnaround times established by HUD in the instance of curable technical deficiencies are relatively brief, so the initial submission of a carefully prepared and complete application is extremely important. Applicants should also *carefully review sections III. C. 1. (b) and (c)* of this funding announcement to determine if their SEMAP designation, OIG status, existence of significant program compliance problems, or percentage expended of allocated budget authority will require the submission of additional information with their application.

a. Form SF–424, Application for Federal Assistance. All applicants must complete and submit the SF–424, Application for Federal Assistance. The SF–424 requires each applicant to enter basic information; e.g., applicant's name, address, Dun and Bradstreet Universal Numbering System (DUNS) number, CFDA number for the type of funding being requested, etc. In the box titled ''Federal Identifier'' (on the top right hand side of the form), the applicant should enter the housing authority code number (for example, CT00). In part a. (Federal), of section 15 (Estimated Funding), the applicant should enter a zero dollar amount, as HUD will determine (as per section II. B. of this funding announcement) the amount of funding needed to fund the number of vouchers an applicant may be awarded. (Electronic Application Submission Tip: When entering the zero for the dollar amount, do not use any decimal points.) The SF–424 is located in the General Section of the SuperNOFA and is also available at the following HUD Web site: *http://www.hud.gov/Apply.* Applicants are placed on notice that by electronically signing the SF–424, the applicant is certifying to the accuracy of (1) All data/information on the Form SF–424, (2) all information described in Section IV. B. 2. (''Certifications and Assurances'') in the General Section (70 FR 13575), published March 21, 2005, and (3) all data and information provided on all other forms and components (including certifications related to rating criteria) in its application. If you are granted a waiver to the electronic submission requirements, the Form SF–424 must be submitted and signed/dated by the applicant. An electronic or handwritten signature on the form certifies the accuracy of the application.

b. Form HUD–52515. All applicants must complete and submit Form HUD–52515, Funding Application, for the Housing Choice Voucher Program. Section C of the form should be left blank. The standard Assurances and Certifications required to be submitted by each applicant are on the Form HUD–52515, which includes the Equal Opportunity Certification, and the Certification Regarding Lobbying. A copy of the Form HUD–52515, which is not included among the forms in the General Section of the SuperNOFA, is attached to this funding announcement.

c. Letter of Intent and Narrative. In the letter of intent and narrative, the applicant must indicate the number of vouchers being requested, whether it will accept a reduction in the number of vouchers, and the minimum number of vouchers the applicant will accept, since the funding is limited and HUD may only have enough funds to approve an amount smaller than the number of vouchers requested. The maximum number of vouchers that an applicant may apply for under this announcement is limited to 20, and the minimum number of vouchers an applicant may apply for is 10.

The letter of intent and narrative should also include information addressing how the applicant meets the selection criteria in section V.A. of this NOFA. Failure of the applicant to provide information in connection with selection criterion 1 shall result in the GMC scoring the applicant solely on the basis of information HUD already has on-hand. An applicant (with the exception of a Block Grant MTW PHA) is not required to submit any information with its application relative to selection criterion 2, as HUD will determine the applicant's percentage of allocated budget authority that has been expended for its voucher program based upon information already available within HUD's data systems. *Failure of the applicant to provide the information called for under selection criterion 3, selection criterion 4, or selection criterion 5 shall be considered not curable, but shall not make the application ineligible for processing. Failure to provide the information shall simply mean that the applicant is ineligible for the points under the categories for which it failed to provide the information requested in this funding announcement. An applicant must submit the monitoring and evaluation plan required under selection criterion 6 if the applicant sought to be rated under selection criteria 3, 4, or 5. Failure to provide the monitoring and evaluation plan shall be considered not curable and shall make the application ineligible for processing.*

d. Description of Need for Mainstream Program Vouchers. The PHA's and nonprofit organization's application must demonstrate a need for Mainstream Program vouchers by providing information documenting that the demand for housing for non-elderly and elderly persons with disabilities would equal or exceed the requested number of vouchers. The applicant must assess and document the housing need for elderly and non-elderly persons with disabilities using a range of sources including, but not limited to: Census data, information from the applicant's waiting list (both public housing and housing choice voucher), statistics on recent public housing admissions and housing choice voucher use, data from local advocacy groups and local public and private service agencies familiar with the housing needs of elderly and non-elderly persons with disabilities, and pertinent information from the Consolidated Plan [including the Analysis of Impediments to Fair Housing Choice (AI)] applicable to the applicant's jurisdiction. (See 24 CFR 91.205(d).) *Failure of the applicant to provide the information required under this section (d) shall be determined not curable and the application deemed ineligible for processing.*

e. Mainstream Program Operating Plan. The application must include a plan for operating a program to serve eligible disabled families. This Mainstream Program Operating Plan must, at a minimum, address the following:

(1) How the applicant will carry out its responsibilities under 24 CFR 8.28 to assist recipients in locating units with needed accessibility features;

(2) How the applicant will identify private or public funding sources to help participants cover the costs of modifications that need to be made to their units as reasonable accommodations to their disabilities; and

(3) How the applicant will use a nonprofit organization or PHA under a contract to administer the Mainstream Program vouchers or to otherwise provide services. (This area needs to be

addressed only if the applicant intends to partner with a PHA or nonprofit organization as part of its efforts to serve eligible disabled families receiving Mainstream vouchers.)

Failure of the applicant to provide the information required under this section (e) shall be determined not curable and the application deemed ineligible for processing.

f. Statement Regarding the Steps the PHA and Nonprofit Organization Will Take to Affirmatively Further Fair Housing. The statement must include specific steps to address the categories outlined in Section III. C. 4. b. in the General Section of the HUD SuperNOFA.

g. Block Grant Moving to Work (MTW) PHA Certification. Block Grant MTW agencies must submit a certification with their application certifying to HUD that their voucher program funds have been used to meet the commitments of their MTW Agreement. Block Grant MTW PHAs that cannot rightfully submit such a certification shall submit a statement with their application explaining specifically why such a certification would not be accurate. (MTW PHAs in this latter category will have the number of Mainstream vouchers they are requesting evaluated by HUD on a case-by-case basis.) *Failure of a Block Grant MTW PHA to provide the certification or statement required under this section g. shall be determined not curable and the application deemed ineligible for processing.*

h. Form HUD–2993. Applicants that have received a waiver of the requirement to submit an electronic application are required to complete and submit Form HUD–2993, Acknowledgment of Application Receipt. In addition to the applicant's entering its name and address on the form, the full title of the program under which the applicant is seeking funding must also be entered. This form is located in the General Section of the SuperNOFA (70 FR 13575), published March 21, 2005, and is also available at the following Web site: *www.grants.gov/Apply.*

i. Identification of Primary Market Area. Each applicant must specify in the application its primary market area, *i.e.*, the geographic area in which it is legally authorized to operate and where the vouchers will be issued. This information may be different from that entered by such an applicant on the Form HUD–52515, as the form calls for the applicant to identify its ''legal area of operation,'' which may be far more geographically expansive than the specific city, county, or area within a state where a PHA (particularly a regional or state PHA) or nonprofit organization intends to issue the vouchers. This information is critical because, as indicated in section V. A. 2. a. of this funding announcement, the geographic area in which the vouchers are intended to be issued and in which the applicant is legally authorized to operate a Housing Choice Voucher Program will be used by the applicant (and subsequently by the GMC during the review of applications) to determine the percentage of the nation's housing needs for disabled persons at or below the poverty level that are within the applicant's primary market area. For example, although an applicant may be legally authorized to operate throughout the entire county in which it is located, if the vouchers will be issued only in two cities within that county then the primary market area is those two cities and not the entire county. Conversely, if the applicant is planning to issue vouchers to all cities within a county, then the applicant must list the county only and not list the individual cities within that county (the county is the sum of all housing needs for cities within a county). If, in addition to the county, there are individual cities outside the county where the applicant also will be issuing vouchers, the PHA then also must list these cities. A state PHA or nonprofit organization legally authorized to operate throughout the entire state, but which intends to issue the Mainstream vouchers in only one county, must list solely that county as its primary market area. In addition, the primary market area shall not include a geographic area in which the applicant is issuing vouchers, outside its normal, legally authorized area of operation, based upon an agreement with another agency/PHA to issue vouchers in the other agency's/PHA's jurisdiction.

2. SF–424 Supplement, Survey on Ensuring Equal Opportunity for Applicants. Non-profit applicants are invited to respond to a survey questionnaire. This survey is designed to help HUD assess the interest in its funding opportunities to grassroots community-based organizations, including faith-based organizations. A copy of the survey form can be found in the General Section of the SuperNOFA (70 FR 13575), published March 21, 2005, and is also available as part of the application package at *www.grants.gov/Apply.*

C. Submission Date and Time

Applications submitted through *www.grants.gov/Apply* must be received by no later than 11:59:59 p.m. Eastern Time on January 3, 2006. Applicants receiving a waiver of the electronic submission requirement must submit their application to the United States Postal Service no later than 11:59:59 p.m. Eastern Time on January 3, 2006. This application submission date is firm. In the interest of fairness to all competing PHAs and nonprofit organizations, HUD will not consider any application that is submitted after the application submission date. Applicants should take this practice into account and submit their materials early to avoid any risk of loss of eligibility brought about by submission problems, unanticipated delays, weather conditions, or other delivery-related problems. See paragraph IV. titled ''Application and Submission Information'' in the General Section of the SuperNOFA (70 FR 13575), published March 21, 2005, regarding HUD's procedures pertinent to the submission of your application. Applicants applying electronically will receive a confirmation of receipt, and then 24 to 48 hours later will receive a validation receipt that indicates the application was accepted for processing by *www.grants.gov* for transfer to the offering agency (HUD). Applicants are advised to submit electronically at least 72 hours prior to the due date and time to allow themselves time to correct any deficiencies noted in the electronic application during the Grants.gov validation process. The validation process does not check for content. It only accepts applications where the applicant is registered and authorized to submit an application on behalf of the organization, if the electronic file is free from viruses, and if all mandatory forms and mandatory data elements in the forms have been completed. With early submission, if an application is rejected for using the wrong DUNS, the applicant will be able to correct the problem prior to the due date and time.

D. Intergovernmental Review

Applicants submitting an application under this funding announcement are not subject to intergovernmental review; *i.e.*, Executive Order (EO) 12372, Intergovernmental Review of Federal Programs.

E. Funding Restrictions

There is a limit on the minimum and maximum number of vouchers that may be requested. An eligible applicant may apply for not less than 10 vouchers and no more than a maximum of 20 vouchers. No less than 10 vouchers and no more than 20 vouchers will be awarded to any applicant under the FY 2005 Mainstream Program. Any application incorrectly requesting more than 20 vouchers shall have its voucher

request reduced by HUD to 20 vouchers. Likewise, because an applicant is not to request less than 10 vouchers under this NOFA, any applicant requesting less than 10 vouchers shall have that voucher request increased by HUD to 10 vouchers.

F. Waivers of the Electronic Submission Requirement; Other Submission Requirements

HUD regulations at 24 CFR 5.110 permit waivers of regulatory requirements to be granted for cause. If you are unable to submit your application electronically, you may request a waiver from this requirement. Your waiver request must be in writing and state the basis for the request and explain why electronic submission is not possible. The waiver request should also include an e-mail and/or name and mailing address where responses can be directed. Applicants must submit waiver requests to the General Deputy Assistant Secretary for Public and Indian Housing, Attn: Paula O. Blunt, General Deputy Assistant Secretary for the Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4100, Washington, DC 20410, with a facsimile copy to the Housing Voucher Management and Operations Division at (202) 401–7974. Waiver requests will be accepted beginning on the date of publication of this NOFA and no later than 30 days prior to the application submission date. HUD will not consider a waiver request that does not conform to the above requirement. If a waiver to the electronic application submission requirements is granted, HUD requires one original and two copies of a paper application to be sent to the Department of Housing and Urban Development, Central Processing Unit, Room 7152, 451 Seventh Street, SW., Washington, DC 20410, Attn: Mainstream Program (Mainstream). A copy of the application is not required to be submitted to the local HUD field office. For ease of reference, the term ''local HUD field office'' will be used in this announcement to mean the local HUD field office Hub or the local HUD field office program center. A listing of HUD field offices is attached to the General Section of the SuperNOFA.

V. Application Review Information

A. Criteria

1. Rating and Ranking. After the Grants Management Center has screened and disapproved any applications found unacceptable for further processing, it will review all acceptable applications to ensure they are technically adequate and responsive to the requirements of this announcement. HUD Headquarters will fund all applications from PHAs and nonprofit organizations that are recommended for funding by the Grants Management Center unless HUD receives approvable applications for more funds than are available. HUD will select applicants to be funded based upon the methodology indicated in section V. B. 1. of this NOFA. Applications meeting all the application submission requirements of section IV. B. of this NOFA will be rated and ranked on the basis of their score under the selection criteria in section V. A. of this NOFA. The maximum score under the selection criteria is 100 points.

2. Selection Criteria. a. Selection Criterion 1, Disabled Persons at or Below the Poverty Level (40 points).

(1) Description: This criterion assesses the number of disabled persons at or below the poverty level in the primary market area served by the applicant, as a percentage of such disabled persons on a national basis using 2000 census data. The primary market area is defined as the geographic area in which the applicant is legally authorized to operate and where the vouchers will be issued. (See section IV. B. 1. i. of this NOFA regarding the description of the primary market area required to be included in each PHA's/nonprofit organization's application.) A table listing all the cities and counties with a population of 10,000 or more persons within the nation states and territories) will be listed with this funding announcement on HUD's Web site at: *www.grants.gov/Apply.* Also indicated on the table will be the number of disabled persons/percentage of such disabled persons at or below the poverty level within each city or county, as a percentage of the number of disabled persons at or below the poverty level within the nation. An applicant (and the GMC during the review of applications) will use the table to determine the percentage of disabled persons at or below the poverty level that is in the applicant's primary market area. The percentage will determine the number of points that the applicant is eligible for under Selection Criterion 1.

(2) *Rating and Assessment:* Points will be assigned based on the number of disabled persons at or below the poverty level in the applicant's primary market area, as a percentage of such persons within the nation. For each tenth of one percent (.001) within the applicant's primary market area, the applicant will receive 5 points. Percentages of .0015, .0025, etc. or higher but less than the next whole tenth of one percent, *i.e.*, .002, .003, etc. shall be rounded to the next whole tenth of a percentage point. An applicant having a primary market area with less than one-tenth of one percent for disabled persons, or a population of 10,000 or fewer, or for which disability percentages are not listed on the table, will receive 5 points under Selection Criterion 1. Likewise, an applicant having a primary market area comprised of more than one community with a population of 10,000 or fewer shall receive a total of 5 points for all such communities combined. In addition, an applicant with a primary market area comprised of one or more cities and/or counties, for which the total combined percentage is equal to or less than .00149, shall receive 5 points. A maximum of 40 points is available under Selection Criterion 1 regardless of how high a percentage of disabled persons at or below the poverty level is located within the applicant's primary market area.

b. Selection Criterion 2, Percentage of Allocated Budget Authority Expended (PABAE) (20 points).

(1) *Description:* This criterion focuses on PABAE; *i.e.*, the percentage of allocated budget authority (ABA) that a PHA or nonprofit organization has expended for its housing choice voucher program. While a PHA or nonprofit organization must have an expenditure rate of at least 97 percent under section III. C. 1. c. of this NOFA in order to have an acceptable application, Selection Criterion 2 provides for the award of selection points to those PHAs and nonprofit organizations having a PABAE of 99 percent or higher. The PABAE for a PHA's or nonprofit organization's voucher program will be calculated by HUD Headquarters' Housing Voucher Financial Management Division based upon the ABA expenditure information submitted electronically to HUD's voucher management system (VMS) on a quarterly basis for the most recent 12-month period (prior to the Mainstream application due date). The PABAE will be determined by HUD dividing the amount of housing assistance payments (HAP) by the ABA. If data in the VMS is not available or cannot be relied upon, HUD will use other sources of available information such as the HUD Central Accounting System (HUDCAPS), up to December 31, 2004, or financial statement information submitted to the Real Estate Assessment Center through the Financial Assessment Sub-System. (Note: A PABAE of a half or more of one percentage point will be rounded to the next highest percentage point for purposes of qualifying for the points available under Selection Criterion 2

(for example, 98.5 percent will be rounded up to 99 percent).

See section IV. B. 1. g. of this NOFA regarding the certification requirement applicable to Block Grant MTW PHAs in connection with qualifying for the points available under Selection Criterion 2.

(2) *Rating and Assessment:* The GMC will assign point values as follows:

* 20 points: The PHA or nonprofit organization has a PABAE of 99 percent for its voucher program.

c. Selection Criterion 3, Homeownership Option Under Housing Choice Voucher Program (10 points). (Note: Selection Criterion 3 addresses HUD's homeownership policy priority.)

(1) *Description:* Applicants are encouraged, consistent with 24 CFR 982.625–982.643, to establish a homeownership component or to expand upon an existing component within their housing choice voucher program. Points will be awarded under this NOFA to applicants that are able to meet the rating and assessment criteria listed below.

(2) *Rating and Assessment:* The GMC will assign points under Selection Criterion 3 as follows:

* 3 points: The applicant has established a housing choice voucher homeownership program as evidenced by its submission with its application of a copy of the Board resolution approving changes to its administrative plan for the implementation of the homeownership option under its housing choice voucher program.

* 7 points: The applicant qualifies for the three points under the paragraph immediately above and has had one or more closings under its homeownership program, as evidenced by the applicant's submission of information to HUD's Public and Indian Housing Information Center (PIC) on Form HUD–50058, Family Report, indicating at least one homeownership unit has completed the closing process; *i.e.*, has qualified the PHA for the $1,000 administrative fee associated with each homeownership voucher closing, as described in Notice PIH 2005–14 (HA) and the predecessor to this Notice issued ''To All Section 8 Housing Authorities'' on October 27, 2004. (Note: The applicant can only qualify for the seven points under this paragraph if it has first qualified for the three points under the paragraph immediately above.)

d. Selection Criterion 4, Family Self-Sufficiency (FSS) Slots Filled (10 points).

(1) *Description:* PHAs are encouraged, consistent with 24 CFR Part 984, to fill the slots required under a mandatory FSS program, and to establish a voluntary FSS program and fill slots under that program where a mandatory FSS program is not required. Points will be awarded under this NOFA to PHAs submitting a certification with their application certifying that they have filled one or more of their slots with persons with disabilities, and that these slots have been reported to HUD's PIC on the Form HUD–50058. (Note: Nonprofit organizations may also qualify for points under this selection criterion, but the basis upon which they may do so is different than for PHAs, as indicated below.)

(2) *Rating and Assessment for PHAs:* The GMC will assign rating points under Selection Criterion 4 as follows:

* 10 points: 20 or more of the applicant's FSS slots have been filled by persons with disabilities.

* 5 points: 10 to 19 of the applicant's FSS slots have been filled by persons with disabilities.

* 3 points: 1 to 9 of the applicant's FSS slots have been filled by persons with disabilities.

* 0 points: None of the applicant's FSS slots have been filled by persons with disabilities.

(3) *Rating and Assessment for Nonprofit Organizations:* In order to receive any points under this criterion, a nonprofit *must submit a certification statement indicating that it currently assists persons with disabilities either directly, or indirectly through referrals to other agencies,* with such needs as child care, transportation, educational and job training opportunities, employment, money management, and such other similar needs as are necessary to assist these families in achieving economic independence and self-sufficiency. The GMC will assign rating points under Selection Criterion 4 when the application is accompanied by the certification statement indicated immediately above and also accompanied by one of the certifications indicated below, as follows:

* 10 points: A certification is submitted with the application certifying that the nonprofit organization will assist 80 percent or more of its Mainstream voucher families either directly, or indirectly through referrals to other agencies, with such needs as child care, transportation, educational and job training opportunities, employment, money management, and such other similar needs as are necessary to assist these families in achieving economic independence and self-sufficiency.

* 5 points: A certification is submitted with the application certifying that the nonprofit organization will assist 50 to 79 percent of its Mainstream voucher families either directly, or indirectly through referrals to other agencies, with such needs as child care, transportation, educational and job training opportunities, employment, money management, and such other similar needs as are necessary to assist these families in achieving economic independence and self-sufficiency.

* 3 points: A certification is submitted with the application certifying that the nonprofit organization will assist 25 to 49 percent of its Mainstream voucher families either directly, or indirectly through referrals to other agencies, with such needs as child care, transportation, educational and job training opportunities, employment, money management, and such other similar needs as are necessary to assist these families in achieving economic independence and self-sufficiency.

* 0 points: The nonprofit organization does not submit any of the certification statements indicated immediately above.

e. Selection Criterion 5, Commitments from Outside Agencies (15 points).

(Note: Selection Criterion 5's category for 15 points addresses HUD's grassroots faith-based and other community-based organizations policy priority.)

(1) *Description:* The applicant provides documentation that it has entered into agreements with one or more organizations to assist disabled families with moving costs, security deposits, utility hook-up fees, utility deposits, medical care, transportation, educational opportunities, employment, and child care.

(2) *Rating and Assessment:* The GMC will assign points as follows:

* 15 points: The applicant provides copies of the agreements that it has entered into with three or more organizations to assist disabled families with any one or more of the following: moving costs, security deposits, utility hook-up fees, utility deposits, medical care, transportation, educational opportunities, employment, and child care. The applicant must also provide information indicating it has undertaken one or more of the activities to promote the participation of grass roots faith-based and other community-based organizations indicated in section V. b. 1. f. of the General Section of the SuperNOFA, as relates to the aforementioned agreements. The applicant's provision of the former, but not the latter information, shall result in the application receiving no more than 9 points under this Selection Criterion 5, as indicated below.

* 9 points: The applicant provides copies of the agreements that it has entered into with three or more organizations to assist disabled families with any one or more of the following: moving costs, security deposits, utility hook-up fees, utility deposits, medical care, transportation, educational opportunities, employment, and child care.

* 6 points: The applicant provides copies of the agreements it has entered into with two organizations to assist disabled families with any one or more of the following: moving costs, security deposits, utility hook-up fees, utility deposits, medical care, transportation, educational opportunities, employment, and child care.

* 3 points: The applicant provides copies of the agreements it has entered into with one organization to assist disabled families with any one or more of the following: moving costs, security deposits, utility hook-up fees, utility deposits, medical care, transportation, educational opportunities, employment, and child care.

f. Selection Criterion 6, Achieving Results and Program Evaluation (5 points). (Note: Selection Criterion 6 addresses HUD's Achieving Results and Program Evaluation policy priority. This rating criterion is *mandatory; i.e.*, applicants must provide information in their application responding to this rating criterion.)

(1) *Description:* This criterion emphasizes HUD's determination to ensure that applicants meet commitments made in their applications and assess their performance in meeting performance goals. HUD requires Mainstream Program applicants to develop an effective, quantifiable, outcome-oriented *monitoring and evaluation* plan for measuring performance and determining that *goals* have been met. This monitoring and evaluation plan requirement is applicable to Selection Criterion 3 (Homeownership Option Under Housing Choice Voucher Program), Selection Criterion 4 (FSS Slots Filled), and Selection Criterion 5 (Commitments from Outside Agencies). The plan is to be set forth on the Form HUD–96010, Logic Model, and shall address solely those selection criteria (3, 4, and 5) under which the applicant sought to be rated in its application. The Form HUD–96010 must be submitted with the applicant's application. See section VI. C., Reporting, of this NOFA regarding the reporting requirements pertaining to the goals identified by the applicant on the Form HUD–96010.

(2) *Rating and Assessment:* The GMC will assign points as follows:

* 5 points: The applicant submits a monitoring and evaluation plan meeting the descriptive requirements outlined immediately above.

B. Reviews and Selection Process

1. Selection for Funding. HUD will select applications for funding that meet all of the application submission requirements in section IV. B. of this NOFA and that score a sufficient number of points under the selection criteria listed in section V. A. of this NOFA. Applications will be ranked from highest to lowest score in descending order, with the highest ranked application selected first for funding, and so forth. Where two or more applicants have exactly the same score under the selection criteria in section V. A. of this NOFA and insufficient funding remains to fund all of them, applicants will be funded in the order of the exact percentage of disabled persons at or below the poverty level that is in each applicant's primary market area. The applicant with the highest percentage will be funded first, etc. HUD will limit the number of applications selected for funding from any state to 10 percent of the budget authority available for the Mainstream Program. If establishing this geographic limit would result, however, in unreserved budget authority, HUD may modify this limit to assure that all available funds are used. When remaining budget authority is insufficient to fund the last selected application in full, the application will be funded to the extent of the funding available, unless the applicant indicates that it will only accept a higher number of units. In that event, the next selected application shall be the one indicating a willingness to accept the lesser amount of funding for the units available.

2. Deficient Applications. The application must include all of the information specified in section IV. B. 1., Content of Application, of this announcement. Examples of curable (correctible) technical deficiencies include inconsistencies in the funding request, a failure to submit the proper certifications, or, in the instance where a waiver to the submission of an electronic application has been granted, failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. Applicants will be notified by facsimile or by United States Postal Service (USPS), return receipt requested. Clarifications or corrections to technical deficiencies in accordance with the information provided by HUD must be submitted within 7 calendar days of the date of receipt of the HUD notification—not 14 days as is indicated in the General Section of the SuperNOFA. If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or Federal holiday. If the deficiency is not corrected within this time period, HUD will reject your application as incomplete and it will not be considered for funding.

3. Unacceptable Applications; Applicant Debriefing. After the 7 calendar day technical deficiency correction period, the Office of Public and Indian Housing's Grants Management Center will disapprove all applications from PHAs and nonprofit organizations that the GMC determines are not acceptable for processing. The GMC's notification of rejection letter must state the basis for the decision. Applicants may request an applicant debriefing related to its application. Beginning 30 days after the awards for assistance are publicly announced in the **Federal Register**, and for at least 120 days thereafter, HUD will, upon receiving a written or email request from the applicant, provide a debriefing to the requesting applicant. (See the General Section of the SuperNOFA for additional information regarding a debriefing.) Applicants requesting to be debriefed must send a written request to Iredia Hutchinson, Director, Grants Management Center, Department of Housing and Urban Development, 501 School Street, SW, Suite 800, Washington, DC 20024. An e-mail request may also be sent to Ms. Hutchinson at the following e-mail address: *Iredia_Hutchinson@hud.gov.* Information provided during a debriefing will include, at a minimum, the final score you received for each rating factor, final evaluation comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

C. Anticipated Announcement and Award Dates

The announcement of Mainstream awards is anticipated to occur during the month of February 2006.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive a letter from HUD Headquarters' Office of Public and Indian Housing (OPIH) advising of their having been selected to receive an award of Mainstream

vouchers. Shortly thereafter, the awardee will receive award documents from OPIH's Financial Management Center (FMC) providing the awardee with notification of its Mainstream voucher award, contract documents, and a funding exhibit.

B. Administrative and National Policy Requirements

1. Housing Choice Voucher Program Regulations. Applicants must administer the Mainstream Program in accordance with HUD regulations and requirements governing the Housing Choice Voucher Program. The only exception to this requirement shall be for nonprofit organizations which shall not be required to comply with the requirements of 24 CFR Part 903, subpart B concerning the requirement for a PHA Plan.

2. Housing Choice Voucher Program Admission Requirements. Housing choice voucher assistance must be provided to eligible disabled families in conformity with regulations and requirements governing the Housing Choice Voucher Program and the PHA's administrative plan.

3. Turnover. When a voucher under this announcement becomes available for reissue (*e.g.*, the family initially selected for the program drops out of the program or is unsuccessful in the search for a unit), the voucher may be used only for another family eligible for assistance under this announcement for five years from the date the rental assistance is placed under an annual contributions contract (ACC). In addition, any renewal by HUD of the five-year voucher funding shall require the continued reissuance of the vouchers to disabled families.

If there is ever an insufficient pool of disabled families on the PHA's or nonprofit organization's housing choice voucher waiting list, the PHA or nonprofit organization shall conduct outreach to encourage eligible persons to apply for this special allocation of vouchers. Outreach may include contacting independent living centers, advocacy organizations for persons with disabilities, and medical, mental health, and social service providers for referrals of persons receiving such services who would benefit from housing choice voucher assistance. If the PHA's or nonprofit organization's housing choice voucher waiting list is closed, and if the PHA or nonprofit organization has insufficient applicants on its housing choice voucher waiting list to use all awarded vouchers under this announcement, the PHA or nonprofit disability organization should open the waiting list for applications from disabled families. PHAs and nonprofit organizations must take care to keep track of the number of disabled vouchers they have been awarded under this funding announcement versus the number of such vouchers they have actually issued to disabled families.

4. PHA and Nonprofit Organization Responsibilities. In addition to the responsibilities under the Housing Choice Voucher Program and HUD regulations concerning nondiscrimination based on disability (24 CFR 8.28) and to affirmatively further fair housing, PHAs and nonprofit organizations that receive voucher funding shall:

a. Where requested by an individual, assist program participants to gain access to supportive services available within the community, but not require eligible applicants or participants to accept supportive services as a condition of participation or continued occupancy in the program.

b. Identify public and private funding sources to assist participants in covering the costs of modifications that need to be made to their units as a reasonable accommodation for their disabilities.

c. Not deny other housing opportunities to persons who qualify for rental assistance under this program, or otherwise restrict access to PHA or nonprofit organization programs to eligible applicants who choose not to participate.

d. Provide housing choice voucher search assistance.

e. In accordance with regulatory guidance, provide higher rents to owners necessary for the provision of accessible units and structural modifications for persons with disabilities.

f. Provide technical assistance to owners for making reasonable accommodations or making units accessible to persons with disabilities.

5. Conducting Business in Accordance With Core Values and Ethical Standards. To reflect core values, all PHAs shall develop and maintain a written code of conduct in the PHA administrative plan that (1) requires compliance with the conflict of interest requirements of the Housing Choice Voucher Program at 24 CFR 982.161, and (2) prohibits the solicitation or acceptance of gifts or gratuities, in excess of a nominal value, by any officer or employee of the PHA, or any contractor, subcontractor, or agent of the PHA. The PHA's administrative plan shall state PHA policies concerning PHA administrative and disciplinary remedies for violation of the PHA code of conduct. The PHA shall inform all officers, employees, and agents of its organization of the PHA's code of conduct.

6. Environmental Review. In accordance with 24 CFR 50.19(b)(11) and 58.35(b)(1) of the HUD regulations, tenant-based rental activities under this program are categorically excluded from the requirements of the National Environmental Policy Act of 1969 (NEPA) and are not subject to environmental review under the related laws and authorities. Activities under the homeownership option of this program are categorically excluded from NEPA requirements and excluded from other environmental requirements under 24 CFR 58.5 in accordance with 24 CFR 58.35(b)(5), but PHAs and nonprofit organizations are responsible for the environmental requirements in 24 CFR 982.626(c).

7. Procurement of Recovered Materials. See section III. C. 4. i. of the General Section of the SuperNOFA.

C. Reporting

Reporting requirements are the same as for regular vouchers under the Housing Choice Voucher Program. Awardee performance on goals included on the Form HUD–96010, Logic Model, shall be monitored by HUD utilizing the current HUD reporting systems for the Housing Choice Voucher Program for tracking PHA progress on homeownership, the FSS program, and commitments from outside agencies. Applicants should internally track their performance in meeting the strategic goals in the Logic Model using the information required by the format of that form.

In addition, HUD requires that funded recipients collect racial and ethnic beneficiary data. It has adopted the Office of Management and Budget's (OMB's) Standards for the Collection of Racial and Ethnic Data. In view of these requirements, funded recipients should use Form HUD–27061, Racial and Ethnic Data Reporting Form (found on www.grants.gov/Apply), a comparable program form, or a comparable electronic data system for this purpose.

VII. Agency Contacts

A. Technical Assistance

Before the application due date, HUD staff is available to provide general guidance and technical assistance about this NOFA. However, staff is not permitted to assist in preparing your application. Also, following selection of applicants, but before awards are announced, staff may assist in clarifying or confirming information that is a prerequisite to the offer of an award. You may contact George C.

Hendrickson, Housing Program Specialist, Room 4214, Office of Public Housing and Voucher Programs, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0477, ext. 4064. Subsequent to application submission, you may contact the Grants Management Center at (202) 358–0221. (These are not toll-free numbers.) Persons with hearing or speech impairments may access these numbers via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number). For technical support for registering to apply using *www.grants.gov,* downloading an application, or electronically submitting an application, please call Grants.gov Customer Support at 800–518-GRANTS (This is a toll-free number) or e-mail *support@grants.gov.*

B. Satellite Broadcast

HUD will not have a satellite broadcast on the Mainstream Program. Applicants seeking additional information or clarifications regarding the content of the Mainstream NOFA should contact George C. Hendrickson in HUD Headquarters (see paragraph A. immediately above).

VIII. Other Information

A. Please review Section VIII. A., B., E., F., G., and H. (''Other Information'') of the General Section of the SuperNOFA (70 FR 13575), published March 21, 2005. Please note that these subsections are incorporated into this NOFA by reference.

B. Environmental Impact

This NOFA provides funding under, and does not alter the environmental requirements of 24 CFR Part 982, as noted in section VI. B. 6. of this NOFA, and this NOFA concerns activities listed in 24 CFR 50.19(b) as categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) (''NEPA''). Accordingly, under 24 CFR 50.19 (c) (5), this NOFA is categorically excluded from environmental review under NEPA.

C. Paperwork Reduction Act

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0169. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. Public reporting burden for the collection of information is estimated to average one hour per annum per respondent for the application and grant administration.

This includes the time for collecting, reviewing, and reporting the data for the application, semi-annual reports and final report. The information will be used for grantee selection and monitoring the administration of funds. Response to this request for information is required in order to receive the benefits to be derived.

Dated: October 25, 2005.

Paula O. Blunt,

General Deputy Assistant, Secretary for Public and Indian Housing.

BILLING CODE 4210–33–P

Funding Application

Section 8 Tenant-Based Assistance
Rental Certificate Program
Rental Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp. 07/31/2007)

Send the original and two copies of this application form and attachments to the local HUD Field Office

Public reporting burden for this collection of information is estimated to average 1 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Eligible applicants (HAs) must submit this information when applying for grant funding for tenant-based housing assistance programs under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). HUD will use the information to evaluate an application based on selection criteria stated in the Notice of Funding Availability (NOFA). HUD will notify the HA of its approval/disapproval of the funding application. Responses are required to obtain a benefit from the Federal Govenment. The information requested does not lend itself to confidentiality.

Name and Mailing Address of the Housing Agency (HA) requesting housing assistance payments

Application/Project No. (HUD use only)

Do you have an ACC with HUD	No	Yes	Date of Application	Legal Area of Operation (area in which the HA has authority under State and local law to administer the program)
for Section 8 Certificates?	☐	☐		
for Section 8 Vouchers?	☐	☐		

A. Area(s) From Which Families To Be Assisted Will Be Drawn.

Locality (city, town, etc.)	County	Congressional District	Units

B. Proposed Assisted Dwelling Units. (Complete this section based on the unit sizes of the applicants at the top of the waiting list)

	Number of Dwelling Units by Bedroom Size							Total Dwelling Units
	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR	
Certificates								
Vouchers								

C. Average Monthly Adjusted Income. Complete this section based on actual incomes of current participants by unit size. Enter average monthly adjusted income for each program separately and only for the unit sizes requested in Section B.

	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR
Certificates	$	$	$	$	$	$	$
Vouchers	$	$	$	$	$	$	$

D. Need for Housing Assistance. Demonstrate that the project requested in this application is responsive to the condition of the housing stock in the community and the housing assistance needs of low-income families residing in or expected to reside in the community. (If additional space is needed, add separate pages.)

E. Housing Quality Standards (HQS). (Check applicable box)

☐ HUD's HQS will be used with no modifications ☐ Attached for HUD approval are HQS acceptability criteria variations

F. New HA Information. Complete this section if HA currently does not administer a tenant-based certificate or voucher program.

Financial and Administrative Capability. Describe the experience of the HA in administering housing or other programs and provide any other relevant information which evidences present or potential management capability for the proposed rental assistance program. Submit this narrative on a separate page.

Qualification as an HA. Demonstrate that the applicant qualifies as an HA and is legally qualified and authorized to administer the funds applied for in this application. Submit the relevant enabling legislation and a supporting legal opinion.

Note: If this application is approved, the HA must submit for HUD approval a utility allowance schedule and budget documents.

G. Certifications. The following certifications are incorporated as a part of this application form. The signature on the last page of this application of the HA representative authorized to sign the application signifies compliance with the terms of these certifications.

Equal Opportunity Certification

The Housing Agency (HA) certifies that:

(1) The HA will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C..2000d) and regulations issued pursuant thereto (24 CFR Part 1) which state that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance; and will take any measures necessary to effectuate this agreement.

(2) The HA will comply with the Fair Housing Act (42 U.S.C. 3601-19) and regulations issued pursuant thereto (24 CFR Part 100) which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status, or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing.

(3) The HA will comply with Executive Order 11063 on Equal Opportunity in Housing which prohibits discrimination because of race, color, creed, or national origin in housing and related facilities provided with Federal financial assistance and HUD regulations (24 CFR Part 107).

(4) The HA will comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued pursuant thereto (24 CFR Part 8) which state that no otherwise qualified individual with handicaps in the United States shall solely by reason of the handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(5) The HA will comply with the provisions of the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and regulations issued pursuant thereto (24 CFR Part 146) which state that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under a program or activity receiving Federal financial assistance.

(6) The Housing Agency will comply with the provisions of Title II of the Americans with Disabilities Act (42 U.S.C. 12131) and regulations issued pursuant thereto (28 CFR Part 35) which state that subject to the provisions of Title II, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity.

The following provisions apply only to housing assisted with Project-Based Certificates:

(7) The HA will comply with Executive Order 11246 and all regulations pursuant thereto (41 CFR Chapter 60-1) which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal contracts and shall take affirmative action to ensure equal employment opportunity.

(8) The HA will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) and regulations issued pursuant thereto (24 CFR Part 135), which require that, to the greatest extent feasible, opportunities for training and employment be given to low-income persons residing within the unit of local government for metropolitan area (or non-metropolitan county) in which the project is located.

Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Certification Regarding Drug-Free Workplace Requirements

Instructions for Drug-Free Workplace Requirements Certification:

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

4. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

5. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph three).

6. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All *direct charge* employees; (ii) All *indirect charge* employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees or subrecipients or subcontractors in covered workplaces).

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, State, zip code)

Check ☐ if there are workplaces on file that are not identified here.

Housing Agency Signature

Signature of HA Representative	Print or Type Name of Signatory	
	Phone No.	Date

[FR Doc. 05–21894 Filed 11–1–05; 8:45 am]

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Federal Register

Wednesday,
November 2, 2005

Part VI

The President

Proclamation 7951—Death of Rosa Parks

Federal Register
Vol. 70, No. 211
Wednesday, November 2, 2005

Presidential Documents

Title 3—

The President

Proclamation 7951 of October 30, 2005

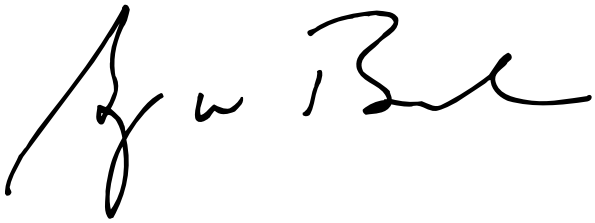
Death of Rosa Parks

By the President of the United States of America

A Proclamation

As a mark of respect for the memory of Rosa Parks, I hereby order, by the authority vested in me by the Constitution and laws of the United States of America, that on the day of her interment, the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset on such day. I also direct that the flag shall be flown at half-staff for the same period at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

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



[FR Doc. 05–21988
Filed 11–1–05; 8:51 am]
Billing code 3195–01–P

Federal Register

Tuesday,
November 2, 2005

Part VII

The President

Notice of November 1, 2005—Continuation of the National Emergency With Respect to Sudan

Federal Register
Vol. 70, No. 211
Tuesday, November 2, 2005

Presidential Documents

Title 3—

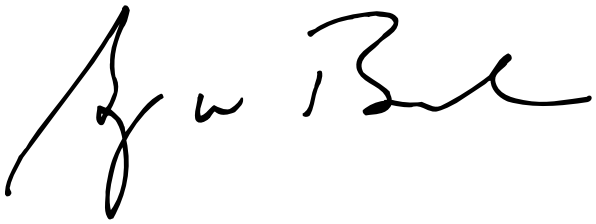
The President

Notice of November 1, 2005

Continuation of the National Emergency With Respect to Sudan

On November 3, 1997, by Executive Order 13067, the President declared a national emergency with respect to Sudan pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Sudan. Because the actions and policies of the Government of Sudan continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on November 3, 1997, and the measures adopted on that date to deal with that emergency must continue in effect beyond November 3, 2005. Therefore, consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Sudan.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
November 1, 2005.

[FR Doc. 05–22015
Filed 11–1–05; 11:19 am]
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 397/P.L. 109–92
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S. 156/P.L. 109–94
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